ONTARIO
LABOUR RELATIONS BOARD
REPORTS

March/April 2010

ONTARIO LABOUR RELATIONS BOARD

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A Bimonthly Series of Decisions from the Ontario Labour Relations Board

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EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

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Bargaining Rights – Bar – Termination – The Board issued reasons for its earlier "bottom line" determination that the applicant ought to be barred from pursuing a second termination application just two months after a first such application was dismissed when the union won the representation vote – The Board held that the exercise of its discretion under s. 111(2)(k) involves a careful weighing of competing interests and objectives – The employees had been given the opportunity to determine by secret ballot whether they wanted the union to continue to represent them, and a majority of them voted in favour of continued representation – Once a vote has been taken and counted, there must be a compelling reason to subject the stability of the collective bargaining relationship to the uncertainty of another test of the union's representation rights – No unusual circumstances were present here – The union should not be distracted from its obligations to bargain by having to defend a second attack on its bargaining rights – Application dismissed

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Bargaining Rights – Construction Industry – Practice and Procedure – Termination – Trade Union – The Board confirmed that applicants seeking to terminate bargaining rights in the ICI sector may deliver their applications to either the employee bargaining agency or the local union with whom they have a relationship – The Board decided that the trade union named as the respondent has the obligation to give notice of the termination application to the Employee Bargaining Agency and the affiliated bargaining agents – Matter continues

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Bargaining Rights – Employee – Status – Termination – IBEW Local 115 held bargaining rights in the ICI sector and in all other sectors in Board Area 12 – In a previous decision, the Board held that the termination application was untimely with respect to the ICI sector, but was timely as it related to all other sectors – On the date of application, the individual applicant performed ICI work for the majority of the day and non-ICI work for a minority of the day – The issue before the Board was whether an employee must spend a majority of his/her work day performing bargaining unit work in order to be an "employee in a bargaining unit" for the purposes of a termination application – The Board found that applying the "majority of time test to sectors" used in certification applications did not make labour relations sense in the context of termination applications – There was no compelling justification to disqualify an individual as an employee of the bargaining unit in circumstances where that individual, on the date of application, performed work within the geographic area of the bargaining unit, within the scope of the bargaining unit and of the type covered by the collective agreement or certificate in the relevant sector, albeit not for the majority of the workday – The Board found that the applicant was an employee in the bargaining unit on the date of application – The Board found that the majority of time principle, as it relates to sectors, was not applicable to termination applications in the construction industry – Ballot to be counted

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Bargaining Unit – Certification – Construction Industry – Local 183 applied for certification under the construction industry provisions of the Act asserting that the locating work performed in an excavation project was construction industry work – Local 183 argued that the work was performed on a construction site and that it was necessary and integral to the work on those sites – The company argued that the purpose of the work was safety, not construction; that its contract was not with the constructor; and that the work was performed before construction began, which therefore could not be a part of the construction industry – The Board found that the work in question was "necessary and integral" to the construction activity as there was a clear connection between the work required to be performed by the locators and the work of the excavation that requires the locating work be undertaken – Therefore, it was construction industry work – Matter continues

TELECOM CANADA LTD.; RE UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183 334

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Certification – Discharge – Interim Relief – Unfair Labour Practice – The union applied for interim reinstatement of the worker contending he was terminated for his involvement in the organizing drive – The evidence showed that prior to his termination the union had signed up five members (in a 65 member bargaining unit) and after his termination the union signed up an additional 37 members and filed for certification – As the worker's termination did not stall the organizing drive (indeed it seemed to propel it), the Board found that interim relief was not necessary to prevent irreparable harm nor was it necessary to achieve other significant labour relations objectives – Accordingly all of the conditions under s. 98(2) were not met – Application dismissed

NOVOTEL CANADA INC., ACCOR CANADA INC., NOVOTEL OTTAWA; RE HOSPITALITY & SERVICE TRADE UNION, LOCAL 261 AND JEFFREY SEGAT.... 287

Certification Where Act Contravened – Construction Industry – Interference with Trade Unions – Remedies – Unfair Labour Practice – The Carpenters commenced an organizing campaign by having an employee of Southend distribute cards – The owner's brother, who was the employee's supervisor, openly expressed his dislike of unions, and burned another employee's union card at the workplace, in front of several other employees – The employer argued that the discharge of the employee who began distributing cards was for excessive absences, and for drinking during lunch – The Board found that the termination of the employee effectively put an end to the organizing campaign – The Board preferred the discharged employee's evidence over that of the employer's witnesses – Although his attendance may have been at issue, it was not the reason for the discharge – Other employees were reprimanded for drinking at lunch; the inside organizer was terminated – The employer did nothing to distance himself from his brother's anti-union behaviour – The Board was satisfied that a representation vote would not reflect the true wishes of employees – Certificate granted

SOUTHEND DRYWALL & ACOUSTICS LTD.; RE UBCJA, LOCAL 2486 317

Certification Where Act Contravened – Discharge for Union Activity – Unfair Labour Practice – During the course of CEP's organizing campaign, Boehmer and some of its employees distributed written communications which the union alleged were false and misleading and which implied that unionization would undermine the viability of the enterprise and would therefore compromise employees' job security – CEP lost the representation vote by a large margin, despite obtaining the support of a majority of the employees as of the application date – The Union alleged that literature distributed by, or with the approval of, Boehmer threatened the livelihood of employees and had a chilling effect on the voters – The issue before the Board was whether Boehmer violated the Act and if so, whether CEP was entitled to remedial certification despite having lost the representation vote – A majority of the Board found that a number of events at the workplace did not constitute unfair labour practices; however, the written communications and the links made in those communications between unionization and job security did constitute a violation of the Act – The majority found that neither a second representation vote alone nor the Board's other customary remedies in combination with a second vote would adequately respond to the threats raised by Boehmer's written communications – The union was entitled to remedial certification – Certificate issued

BOEHMER BOX LP; RE CEP 237

Construction Industry – Bargaining Rights – Practice and Procedure – Termination – Trade Union – The Board confirmed that applicants seeking to terminate bargaining rights in the ICI sector may deliver their applications to either the employee bargaining agency or the local union with whom they have a relationship – The Board decided that the trade union named as the respondent has the obligation to give notice of the termination application to the Employee Bargaining Agency and the affiliated bargaining agents – Matter continues

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Construction Industry – Duty to Bargain in Good Faith – Employer – Unfair Labour Practice – In negotiating the renewal of the collective agreement, the employer tabled a proposal with respect to jurisdiction and contracting out provisions – These amendments pertained to only one of the members of the Skilled Trades Council, the IBEW, which claimed the employer's proposals were an attempt to bargain recognition provisions to impasse, in

breach of the obligation to bargain in good faith –The Board noted that to determine if changes are truly inconsistent with the Act, the context of the particular collective agreement and circumstances must be reviewed – The Board found the proposal to change the jurisdiction clause did not change the description of the bargaining unit and the change to the contracting out wording did not breach the Act, as it was the same language that the other members of the council have lived with, nor does it threaten the long-term integrity of the bargaining unit or IBEW's bargaining rights in light of the provincial collective agreement which covers electrical work in the ICI sector – The Board determined that the employer's proposed amendments did not breach their obligation to bargain in good faith

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE ESSEX AND KENT COUNTIES SKILLED TRADES COUNCIL 275

Construction Industry – Health and Safety – Jurisdictional Dispute – *Trades Qualification and Apprenticeship Act* – The UA called the Health and Safety Inspector to seek a ruling to determine whether or not the work performed by Carpenters could only be done by a person who was licensed as a journeyman or apprentice plumber – The Inspector's Order required the work to be performed by plumbers – The Carpenters seek to have the Board suspend the Order pending the appeal – The Board applied its standard three part test to determine whether a suspension of the Order was appropriate – The first and third element of the test converge as the Regulations of the TQAA specify what training is required for specific trades, and the Board will likely find it unsafe for any person without such training to perform the work – The issue was simplified to an application of the work to the TQAA and Carpenters' and Plumbers' Regulations suggesting that the dispute was entirely a jurisdictional one and not a question of worker safety – Therefore a strong case for a successful appeal existed – Worker safety will not be affected by suspending the Order – There was prejudice to the employer if the Order was not suspended as the UA was seeking to disrupt the commercial arrangements between the employer and contractor – Order suspended until the appeal is determined

ACTION GROUP INC., AND DAN DIGNARD, INSPECTOR; RE UBCJA, LOCAL 1946; RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 593 223

Construction Industry Grievance – CUSW referred two grievances to the Board, asserting rights as against AECL although the union only held bargaining rights with Bruce Power (who had a contractual relationship with AECL) – CUSW argued that (1) Bruce was its agent for executing collective agreements with contractors like AECL; and (2) the Board should find there is a collective agreement between CUSW and AECL so the union can reap the third party benefits of the specific agreements between Bruce and the AECL – The Board examined the language of the contracts and collective agreements and found that while there was the *possibility* of creating an agency relationship, none had been explicitly created by these parties – With respect to the third party benefits, the Board held that in the unlikely circumstance that it could fashion a remedy for a third party arising out of a contract not governed by the LRA, it would not be appropriate to do so here – CUSW had already obtained all that it bargained for with Bruce, and nothing in the AECL contract could or would deprive it of those rights – Grievances dismissed

ATOMIC ENERGY OF CANADA LIMITED; RE CANADIAN UNION OF SKILLED WORKERS 230

Construction Industry Grievance – The Board was asked to determine whether OPG's decision to bar an individual (an employee of Aecon) from its sites is subject to the "just cause" standard established by the collective agreement between the UA and EPSCA – OPG acknowledged that it was a signatory to the EPSCA agreement, but asserted that it was acting as an owner, constructor or licensee, and not as an employer, when it banned the individual – The Board held that OPG was exercising power in respect of the grievor's employment when it banned him from its sites – The Board found that there is nothing in the Act or the EPSCA Agreement that permits an entity to claim it is not subject to the Agreement when the entity wears an "owner" hat as opposed to an "employer" hat – OPG's decision to ban the employee was independent of the employment relationship the employee had with Aecon; OPG's actions come within the scope of the EPSCA Agreement, and it must establish that those actions meet the standard of the Agreement – Matter continues

ONTARIO POWER GENERATION INC., ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND; RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA 298

Delay – Duty of Fair Representation – Health and Safety – Judicial Review – Settlement – The applicant sought review of two Board decisions, one dismissing a s. 74 complaint, and the second dismissing a s. 50 OHSA application in favour of an ongoing proceeding before the Grievance Settlement Board – The matter was settled at the GSB, and the applicant asked the Court to set aside the Minutes of Settlement (MOS) – The Court found there was no evidence of the applicant's diminished capacity during the GSB proceeding, so the MOS was fatal to his claim – In addition the MOS was not a reviewable decision – The applications for review of the Board rulings were dismissed for delay

DONALD AMODEO; RE ONTARIO MINISTRY OF LABOUR (HER MAJESTY IN RIGHT OF ONTARIO), ATTORNEY GENERAL OF ONTARIO, GRIEVANCE SETTLEMENT BOARD, OPSEU AND OLRB 360

Discharge – Certification – Interim Relief – Unfair Labour Practice – The union applied for interim reinstatement of the worker contending he was terminated for his involvement in the organizing drive – The evidence showed that prior to his termination the union had signed up five members (in a 65 member bargaining unit) and after his termination the union signed up an additional 37 members and filed for certification – As the worker's termination did not stall the organizing drive (indeed it seemed to propel it), the Board found that interim relief was not necessary to prevent irreparable harm nor was it necessary to achieve other significant labour relations objectives – Accordingly all of the conditions under s. 98(2) were not met – Application dismissed

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BOEHMER BOX LP; RE CEP 237

Discharge for Union Activity – Interim Relief – Practice and Procedure – The SEIU sought an interim order for reinstatement of a probationary employee – A decision had been made by the employee's supervisor that she was not suitable for permanent employment – This decision was not communicated to the employee because she had requested a leave of absence to complete a professional examination – Upon her return, the employee learned of the organizing campaign and began showing her support – She was terminated five days later – SEIU alleged that the discharge effectively halted the union's organizing efforts – Princess Gardens conceded that a campaign to establish bargaining rights was underway and that there was a serious issue to be decided in the pending proceeding – The Board did not find it necessary to determine whether relief was necessary to prevent irreparable harm or to achieve other significant labour relations objectives or whether the balance of harm favoured the granting of the interim relief, because it appeared to the Board that the dismissal was unrelated to the exercise of the employee's rights in support of the union – The Board found that Princess Gardens had a plausible basis for ending the employee's employment and its explanation for the delay in informing her of the dismissal was also plausible – The Board found on a preliminary assessment that the discharge was unrelated to the exercise of rights under the Act by an employee and therefore the Board was prevented from exercising its discretion to reinstate – Application for interim relief dismissed

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Duty of Fair Representation – Delay – Health and Safety – Judicial Review – Settlement – The applicant sought review of two Board decisions, one dismissing a s. 74 complaint, and the second dismissing a s. 50 OHSA application in favour of an ongoing proceeding before the Grievance Settlement Board – The matter was settled at the GSB, and the applicant asked the Court to set aside the Minutes of Settlement (MOS) – The Court found there was no evidence of the applicant's diminished capacity during the GSB proceeding, so the MOS was fatal to his claim – In addition the MOS was not a reviewable decision – The applications for review of the Board rulings were dismissed for delay

DONALD AMODEO; RE ONTARIO MINISTRY OF LABOUR (HER MAJESTY IN RIGHT OF ONTARIO), ATTORNEY GENERAL OF ONTARIO, GRIEVANCE SETTLEMENT BOARD, OPSEU AND OLRB 360

Duty to Bargain in Good Faith – Construction Industry – Employer – Unfair Labour Practice – In negotiating the renewal of the collective agreement, the employer tabled a proposal with respect to jurisdiction and contracting out provisions – These amendments pertained to only one of the members of the Skilled Trades Council, the IBEW, which claimed the

employer's proposals were an attempt to bargain recognition provisions to impasse, in breach of the obligation to bargain in good faith –The Board noted that to determine if changes are truly inconsistent with the Act, the context of the particular collective agreement and circumstances must be reviewed – The Board found the proposal to change the jurisdiction clause did not change the description of the bargaining unit and the change to the contracting out wording did not breach the Act, as it was the same language that the other members of the council have lived with, nor does it threaten the long-term integrity of the bargaining unit or IBEW's bargaining rights in light of the provincial collective agreement which covers electrical work in the ICI sector – The Board determined that the employer's proposed amendments did not breach their obligation to bargain in good faith

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE ESSEX AND KENT COUNTIES SKILLED TRADES COUNCIL 275

Employee – Bargaining Rights – Status – Termination – IBEW Local 115 held bargaining rights in the ICI sector and in all other sectors in Board Area 12 – In a previous decision, the Board held that the termination application was untimely with respect to the ICI sector, but was timely as it related to all other sectors – On the date of application, the individual applicant performed ICI work for the majority of the day and non-ICI work for a minority of the day – The issue before the Board was whether an employee must spend a majority of his/her work day performing bargaining unit work in order to be an "employee in a bargaining unit" for the purposes of a termination application – The Board found that applying the "majority of time test to sectors" used in certification applications did not make labour relations sense in the context of termination applications – There was no compelling justification to disqualify an individual as an employee of the bargaining unit in circumstances where that individual, on the date of application, performed work within the geographic area of the bargaining unit, within the scope of the bargaining unit and of the type covered by the collective agreement or certificate in the relevant sector, albeit not for the majority of the workday – The Board found that the applicant was an employee in the bargaining unit on the date of application – The Board found that the majority of time principle, as it relates to sectors, was not applicable to termination applications in the construction industry – Ballot to be counted

TERRY SHORTT ELECTRICAL SERVICES LTD.; RE GLYNN SAYEAU; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO QUINTE & ST. LAWRENCE ELECTRICAL WORKERS LOCAL UNION 115 342

Employer – Construction Industry – Duty to Bargain in Good Faith – Unfair Labour Practice – In negotiating the renewal of the collective agreement, the employer tabled a proposal with respect to jurisdiction and contracting out provisions – These amendments pertained to only one of the members of the Skilled Trades Council, the IBEW, which claimed the employer's proposals were an attempt to bargain recognition provisions to impasse, in breach of the obligation to bargain in good faith –The Board noted that to determine if changes are truly inconsistent with the Act, the context of the particular collective agreement and circumstances must be reviewed – The Board found the proposal to change the jurisdiction clause did not change the description of the bargaining unit and the change to the contracting out wording did not breach the Act, as it was the same language that the other members of the council have lived with, nor does it threaten the long-term integrity of the bargaining unit or IBEW's bargaining rights in light of the provincial collective agreement which covers electrical work in the ICI sector – The Board determined that the employer's proposed amendments did not breach their obligation to bargain in good faith

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE ESSEX AND KENT COUNTIES SKILLED TRADES COUNCIL 275

Employment Standards – The employer sought review of an order requiring it to pay vacation pay to the employee, against whom the employer had a court order for restitution following a conviction for theft – The Board found that the wages were withheld before the conviction and restitution order, and such withholding was in violation of the set-off provisions of the Act – The employer is not allowed to put itself in a better position than another debtor by withholding wages – There was no authorization for the set-off, and the court order only required that the employee make reasonable efforts to comply – Application dismissed

GRAPPLE MARKETING INC. c.o.b. as KWIK KOPY DESIGN AND PRINT CENTRE; RE BONNIELEE HARRISON AND DIRECTOR OF EMPLOYMENT STANDARDS 272

Health and Safety – Construction Industry – Jurisdictional Dispute – *Trades Qualification and Apprenticeship Act* – The UA called the Health and Safety Inspector to seek a ruling to determine whether or not the work performed by Carpenters could only be done by a person who was licensed as a journeyman or apprentice plumber – The Inspector's Order required the work to be performed by plumbers – The Carpenters seek to have the Board suspend the Order pending the appeal – The Board applied its standard three part test to determine whether a suspension of the Order was appropriate – The first and third element of the test converge as the Regulations of the TQAA specify what training is required for specific trades, and the Board will likely find it unsafe for any person without such training to perform the work – The issue was simplified to an application of the work to the TQAA and Carpenters' and Plumbers' Regulations suggesting that the dispute was entirely a jurisdictional one and not a question of worker safety – Therefore a strong case for a successful appeal existed – Worker safety will not be affected by suspending the Order – There was prejudice to the employer if the Order was not suspended as the UA was seeking to disrupt the commercial arrangements between the employer and contractor – Order suspended until the appeal is determined

ACTION GROUP INC., AND DAN DIGNARD, INSPECTOR; RE UBCJA, LOCAL 1946; RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 593 223

Health and Safety – Delay – Duty of Fair Representation – Judicial Review – Settlement – The applicant sought review of two Board decisions, one dismissing a s. 74 complaint, and the second dismissing a s. 50 OHSA application in favour of an ongoing proceeding before the Grievance Settlement Board – The matter was settled at the GSB, and the applicant asked the Court to set aside the Minutes of Settlement (MOS) – The Court found there was no evidence of the applicant's diminished capacity during the GSB proceeding, so the MOS was fatal to his claim – In addition the MOS was not a reviewable decision – The applications for review of the Board rulings were dismissed for delay

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Health and Safety – Local 1946 sought a suspension of an order requiring electricians to mount bed locators in hospital rooms at the Victoria Hospital construction project – The Board found that it was more probable than not that the bed locator would be a metal frame fixture containing smaller electrical fixtures and raceways; it was not an electrical fixture within the meaning of the *Trades Qualification and Apprenticeship Act* – Given that, the Board found that Local 1946 demonstrated that it had a strong *prima facie* case for a successful appeal – Local 1946 also established that suspending the order was not likely to create a danger to the health and safety of workers and that it would be prejudiced if the order were not suspended – Since Local 1946 was able to satisfy all three criteria for a suspension of the order, the request was granted pending the disposition of the appeal

ELLISDON CORPORATION; DAN DIGNARD, INSPECTOR; AND IBEW, LOCAL 120; RE UBCJA, LOCAL 1946 262

Health and Safety – Reconsideration – The Board allowed an appeal of the Inspector's order ([2010] OLRB Rep. Jan/Feb 199) and both the Union and the Ministry of Labour applied for reconsideration – The Union submitted that the underlying factual basis for the Board's decision had changed significantly since the employer had decided to reopen one of the mines which was only on care and maintenance – The Board found that the evidence that the Union sought to put before the Board related to developments that occurred or will take place after the order under appeal was issued, and were accordingly irrelevant and would not be considered by the Board – The Board went on to note that the dismissal of the appeal and denial of the reconsideration did not preclude an inspector conducting another investigation and making a determination with respect to the employer's compliance with the Regulations based on the facts that exist when the investigation takes place – Reconsideration denied

XSTRATA CANADA CORPORATION; RE UNITED STEELWORKERS, LOCAL 2020; RICK KULYSKI, INSPECTOR; AND CAW CANADA AND ITS LOCAL 598.... 354

Interference with Trade Unions – Certification Where Act Contravened – Construction Industry – Remedies – Unfair Labour Practice – The Carpenters commenced an organizing campaign by having an employee of Southend distribute cards – The owner's brother, who was the employee's supervisor, openly expressed his dislike of unions, and burned another employee's union card at the workplace, in front of several other employees – The employer argued that the discharge of the employee who began distributing cards was for excessive absences, and for drinking during lunch – The Board found that the termination of the employee effectively put an end to the organizing campaign – The Board preferred the discharged employee's evidence over that of the employer's witnesses – Although his attendance may have been at issue, it was not the reason for the discharge – Other employees were reprimanded for drinking at lunch; the inside organizer was terminated – The employer did nothing to distance himself from his brother's anti-union behaviour – The Board was satisfied that a representation vote would not reflect the true wishes of employees – Certificate granted

SOUTHEND DRYWALL & ACOUSTICS LTD.; RE UBCJA, LOCAL 2486 317

Interim Relief – Certification – Discharge – Unfair Labour Practice – The union applied for interim reinstatement of the worker contending he was terminated for his involvement in the organizing drive – The evidence showed that prior to his termination the union had signed up five members (in a 65 member bargaining unit) and after his termination the union signed up an additional 37 members and filed for certification – As the worker's termination did not stall the organizing drive (indeed it seemed to propel it), the Board

found that interim relief was not necessary to prevent irreparable harm nor was it necessary to achieve other significant labour relations objectives – Accordingly all of the conditions under s. 98(2) were not met – Application dismissed

NOVOTEL CANADA INC., ACCOR CANADA INC., NOVOTEL OTTAWA; RE HOSPITALITY & SERVICE TRADE UNION, LOCAL 261 AND JEFFREY SEGAT.... 287

Interim Relief – Discharge for Union Activity – Practice and Procedure – The SEIU sought an interim order for reinstatement of a probationary employee – A decision had been made by the employee's supervisor that she was not suitable for permanent employment – This decision was not communicated to the employee because she had requested a leave of absence to complete a professional examination – Upon her return, the employee learned of the organizing campaign and began showing her support – She was terminated five days later – SEIU alleged that the discharge effectively halted the union's organizing efforts – Princess Gardens conceded that a campaign to establish bargaining rights was underway and that there was a serious issue to be decided in the pending proceeding – The Board did not find it necessary to determine whether relief was necessary to prevent irreparable harm or to achieve other significant labour relations objectives or whether the balance of harm favoured the granting of the interim relief, because it appeared to the Board that the dismissal was unrelated to the exercise of the employee's rights in support of the union – The Board found that Princess Gardens had a plausible basis for ending the employee's employment and its explanation for the delay in informing her of the dismissal was also plausible – The Board found on a preliminary assessment that the discharge was unrelated to the exercise of rights under the Act by an employee and therefore the Board was prevented from exercising its discretion to reinstate – Application for interim relief dismissed

PRINCESS GARDENS RETIREMENT RESIDENCE; RE SEIU, LOCAL 1 CANADA.. 309

Judicial Review – Delay – Duty of Fair Representation – Health and Safety – Settlement – The applicant sought review of two Board decisions, one dismissing a s. 74 complaint, and the second dismissing a s. 50 OHSA application in favour of an ongoing proceeding before the Grievance Settlement Board – The matter was settled at the GSB, and the applicant asked the Court to set aside the Minutes of Settlement (MOS) – The Court found there was no evidence of the applicant's diminished capacity during the GSB proceeding, so the MOS was fatal to his claim – In addition the MOS was not a reviewable decision – The applications for review of the Board rulings were dismissed for delay

DONALD AMODEO; RE ONTARIO MINISTRY OF LABOUR (HER MAJESTY IN RIGHT OF ONTARIO), ATTORNEY GENERAL OF ONTARIO, GRIEVANCE SETTLEMENT BOARD, OPSEU AND OLRB..... 360

Jurisdictional Dispute – Construction Industry – Health and Safety – *Trades Qualification and Apprenticeship Act* – The UA called the Health and Safety Inspector to seek a ruling to determine whether or not the work performed by Carpenters could only be done by a person who was licensed as a journeyman or apprentice plumber – The Inspector's Order required the work to be performed by plumbers – The Carpenters seek to have the Board suspend the Order pending the appeal – The Board applied its standard three part test to determine whether a suspension of the Order was appropriate – The first and third element of the test converge as the Regulations of the TQAA specify what training is required for specific trades, and the Board will likely find it unsafe for any person without such training to perform the work – The issue was simplified to an application of

the work to the TQAA and Carpenters' and Plumbers' Regulations suggesting that the dispute was entirely a jurisdictional one and not a question of worker safety – Therefore a strong case for a successful appeal existed – Worker safety will not be affected by suspending the Order – There was prejudice to the employer if the Order was not suspended as the UA was seeking to disrupt the commercial arrangements between the employer and contractor – Order suspended until the appeal is determined

ACTION GROUP INC., AND DAN DIGNARD, INSPECTOR; RE UBCJA, LOCAL 1946; RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 593 223

Practice and Procedure – Bargaining Rights – Construction Industry – Termination – Trade Union – The Board confirmed that applicants seeking to terminate bargaining rights in the ICI sector may deliver their applications to either the employee bargaining agency or the local union with whom they have a relationship – The Board decided that the trade union named as the respondent has the obligation to give notice of the termination application to the Employee Bargaining Agency and the affiliated bargaining agents – Matter continues

KIDD MECHANICAL INC.; RE EMPLOYEES OF KIDD MECHANICAL INC. REPRESENTED BY VIKKI SCHLONIES; RE ONTARIO PIPE TRADES COUNCIL OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, ON ITS OWN BEHALF AND ON BEHALF OF ALL OF ITS AFFILIATED BARGAINING AGENTS 282

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of the mines which was only on care and maintenance – The Board found that the evidence that the Union sought to put before the Board related to developments that occurred or will take place after the order under appeal was issued, and were accordingly irrelevant and would not be considered by the Board – The Board went on to note that the dismissal of the appeal and denial of the reconsideration did not preclude an inspector conducting another investigation and making a determination with respect to the employer's compliance with the Regulations based on the facts that exist when the investigation takes place – Reconsideration denied

XSTRATA CANADA CORPORATION; RE UNITED STEELWORKERS, LOCAL 2020; RICK KULYSKI, INSPECTOR; AND CAW CANADA AND ITS LOCAL 598.... 354

Remedies – Certification Where Act Contravened – Construction Industry – Interference with Trade Unions – Unfair Labour Practice – The Carpenters commenced an organizing campaign by having an employee of Southend distribute cards – The owner's brother, who was the employee's supervisor, openly expressed his dislike of unions, and burned another employee's union card at the workplace, in front of several other employees – The employer argued that the discharge of the employee who began distributing cards was for excessive absences, and for drinking during lunch – The Board found that the termination of the employee effectively put an end to the organizing campaign – The Board preferred the discharged employee's evidence over that of the employer's witnesses – Although his attendance may have been at issue, it was not the reason for the discharge – Other employees were reprimanded for drinking at lunch; the inside organizer was terminated – The employer did nothing to distance himself from his brother's anti-union behaviour – The Board was satisfied that a representation vote would not reflect the true wishes of employees – Certificate granted

SOUTHEND DRYWALL & ACOUSTICS LTD.; RE UBCJA, LOCAL 2486 317

Settlement – Delay – Duty of Fair Representation – Health and Safety – Judicial Review – The applicant sought review of two Board decisions, one dismissing a s. 74 complaint, and the second dismissing a s. 50 OHSA application in favour of an ongoing proceeding before the Grievance Settlement Board – The matter was settled at the GSB, and the applicant asked the Court to set aside the Minutes of Settlement (MOS) – The Court found there was no evidence of the applicant's diminished capacity during the GSB proceeding, so the MOS was fatal to his claim – In addition the MOS was not a reviewable decision – The applications for review of the Board rulings were dismissed for delay

DONALD AMODEO; RE ONTARIO MINISTRY OF LABOUR (HER MAJESTY IN RIGHT OF ONTARIO), ATTORNEY GENERAL OF ONTARIO, GRIEVANCE SETTLEMENT BOARD, OPSEU AND OLRB 360

Status – Bargaining Rights – Employee – Termination – IBEW Local 115 held bargaining rights in the ICI sector and in all other sectors in Board Area 12 – In a previous decision, the Board held that the termination application was untimely with respect to the ICI sector, but was timely as it related to all other sectors – On the date of application, the individual applicant performed ICI work for the majority of the day and non-ICI work for a minority of the day – The issue before the Board was whether an employee must spend a majority of his/her work day performing bargaining unit work in order to be an "employee in a bargaining unit" for the purposes of a termination application – The Board found that applying the "majority of time test to sectors" used in certification applications did not make labour relations sense in the context of termination

applications – There was no compelling justification to disqualify an individual as an employee of the bargaining unit in circumstances where that individual, on the date of application, performed work within the geographic area of the bargaining unit, within the scope of the bargaining unit and of the type covered by the collective agreement or certificate in the relevant sector, albeit not for the majority of the workday – The Board found that the applicant was an employee in the bargaining unit on the date of application – The Board found that the majority of time principle, as it relates to sectors, was not applicable to termination applications in the construction industry – Ballot to be counted

TERRY SHORTT ELECTRICAL SERVICES LTD.; RE GLYNN SAYEAU; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO QUINTE & ST. LAWRENCE ELECTRICAL WORKERS LOCAL UNION 115 342

Termination – Bar – Bargaining Rights – The Board issued reasons for its earlier "bottom line" determination that the applicant ought to be barred from pursuing a second termination application just two months after a first such application was dismissed when the union won the representation vote – The Board held that the exercise of its discretion under s. 111(2)(k) involves a careful weighing of competing interests and objectives – The employees had been given the opportunity to determine by secret ballot whether they wanted the union to continue to represent them, and a majority of them voted in favour of continued representation – Once a vote has been taken and counted, there must be a compelling reason to subject the stability of the collective bargaining relationship to the uncertainty of another test of the union's representation rights – No unusual circumstances were present here – The union should not be distracted from its obligations to bargain by having to defend a second attack on its bargaining rights – Application dismissed

ONTARIO LOTTERY AND GAMING CORP-ORATION c.o.b. as OLG BRANTFORD CASINO; RE JASON BONNEY; RE SEIU LOCAL 2, BREWERY, GENERAL AND PROFESSIONAL WORKERS' UNION 292

Termination – Bargaining Rights – Construction Industry – Practice and Procedure – Trade Union – The Board confirmed that applicants seeking to terminate bargaining rights in the ICI sector may deliver their applications to either the employee bargaining agency or the local union with whom they have a relationship – The Board decided that the trade union named as the respondent has the obligation to give notice of the termination application to the Employee Bargaining Agency and the affiliated bargaining agents – Matter continues

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Trades Qualification and Apprenticeship Act – Construction Industry – Health and Safety – Jurisdictional Dispute – The UA called the Health and Safety Inspector to seek a ruling to determine whether or not the work performed by Carpenters could only be done by a person who was licensed as a journeyman or apprentice plumber – The Inspector's Order required the work to be performed by plumbers – The Carpenters seek to have the Board suspend the Order pending the appeal – The Board applied its standard three part test to determine whether a suspension of the Order was appropriate – The first and third element of the test converge as the Regulations of the TQAA specify what training is required for specific trades, and the Board will likely find it unsafe for any person without such training to perform the work – The issue was simplified to an application of the work to the TQAA and Carpenters' and Plumbers' Regulations suggesting that the dispute was entirely a jurisdictional one and not a question of worker safety – Therefore a strong case for a successful appeal existed – Worker safety will not be affected by suspending the Order – There was prejudice to the employer if the Order was not suspended as the UA was seeking to disrupt the commercial arrangements between the employer and contractor – Order suspended until the appeal is determined

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Trade Union – Bargaining Rights – Construction Industry – Practice and Procedure – Termination – The Board confirmed that applicants seeking to terminate bargaining rights in the ICI sector may deliver their applications to either the employee bargaining agency or the local union with whom they have a relationship – The Board decided that the trade union named as the respondent has the obligation to give notice of the termination application to the Employee Bargaining Agency and the affiliated bargaining agents – Matter continues

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NOVOTEL CANADA INC., ACCOR CANADA INC., NOVOTEL OTTAWA; RE HOSPITALITY & SERVICE TRADE UNION, LOCAL 261 AND JEFFREY SEGAT.... 287

Unfair Labour Practice – Certification Where Act Contravened – Discharge for Union Activity – During the course of CEP's organizing campaign, Boehmer and some of its employees distributed written communications which the union alleged were false and misleading and which implied that unionization would undermine the viability of the enterprise and would therefore compromise employees' job security – CEP lost the representation vote by a large margin, despite obtaining the support of a majority of the employees as of the application date – The Union alleged that literature distributed by, or with the approval of, Boehmer threatened the livelihood of employees and had a chilling effect on the voters – The issue before the Board was whether Boehmer violated the Act and if so, whether CEP was entitled to remedial certification despite having lost the representation vote – A majority of the Board found that a number of events at the workplace did not constitute unfair labour practices; however, the written communications and the links made in those communications between unionization and job security did constitute a violation of the Act – The majority found that neither a second representation vote alone nor the Board's other customary remedies in combination with a second vote would adequately respond to the threats raised by Boehmer's written communications – The union was entitled to remedial certification – Certificate issued

BOEHMER BOX LP; RE CEP 237

Unfair Labour Practice – Construction Industry – Duty to Bargain in Good Faith – Employer – In negotiating the renewal of the collective agreement, the employer tabled a proposal with respect to jurisdiction and contracting out provisions – These amendments pertained to only one of the members of the Skilled Trades Council, the IBEW, which claimed the employer's proposals were an attempt to bargain recognition provisions to impasse, in breach of the obligation to bargain in good faith –The Board noted that to determine if changes are truly inconsistent with the Act, the context of the particular collective agreement and circumstances must be reviewed – The Board found the proposal to change the jurisdiction clause did not change the description of the bargaining unit and the change to the contracting out wording did not breach the Act, as it was the same language that the other members of the council have lived with, nor does it threaten the long-term integrity of the bargaining unit or IBEW's bargaining rights in light of the provincial collective agreement which covers electrical work in the ICI sector – The Board determined that the employer's proposed amendments did not breach their obligation to bargain in good faith

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE ESSEX AND KENT COUNTIES SKILLED TRADES COUNCIL 275

Unfair Labour Practice Certification – Where Act Contravened – Construction Industry – Interference with Trade Unions – Remedies – The Carpenters commenced an organizing campaign by having an employee of Southend distribute cards – The owner's brother, who was the employee's supervisor, openly expressed his dislike of unions, and burned another employee's union card at the workplace, in front of several other employees – The employer argued that the discharge of the employee who began distributing cards was for excessive absences, and for drinking during lunch – The Board found that the termination of the employee effectively put an end to the organizing campaign – The Board preferred the discharged employee's evidence over that of the employer's witnesses – Although his attendance may have been at issue, it was not the reason for the discharge – Other employees were reprimanded for drinking at lunch; the inside organizer was terminated – The employer did nothing to distance himself from his brother's anti-union behaviour – The Board was satisfied that a representation vote would not reflect the true wishes of employees – Certificate granted

SOUTHEND DRYWALL & ACOUSTICS LTD.; RE UBCJA, LOCAL 2486 317

3747-09-HS United Brotherhood of Carpenters and Joiners of America, Local 1946, Applicant v. **Action Group Inc.**, and Dan Dignard, Inspector, Responding Parties v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 593, Intervenor

Construction Industry – Health and Safety – Jurisdictional Dispute – *Trades Qualification and Apprenticeship Act* – The UA called the Health and Safety Inspector to seek a ruling to determine whether or not the work performed by Carpenters could only be done by a person who was licensed as a journeyman or apprentice plumber – The Inspector's Order required the work to be performed by plumbers – The Carpenters seek to have the Board suspend the Order pending the appeal – The Board applied its standard three part test to determine whether a suspension of the Order was appropriate – The first and third element of the test converge as the Regulations of the TQAA specify what training is required for specific trades, and the Board will likely find it unsafe for any person without such training to perform the work – The issue was simplified to an application of the work to the TQAA and Carpenters' and Plumbers' Regulations suggesting that the dispute was entirely a jurisdictional one and not a question of worker safety – Therefore a strong case for a successful appeal existed – Worker safety will not be affected by suspending the Order – There was prejudice to the employer if the Order was not suspended as the UA was seeking to disrupt the commercial arrangements between the employer and contractor – Order suspended until the appeal is determined

BEFORE: *David A. McKee*, Vice-Chair.

DECISION OF THE BOARD: April 8, 2010

1. This is an application brought pursuant to subsection 61(7) of the *Occupational Health and Safety Act*, R.SO. 1990, c. O.1 as amended (the "Act"). On March 3, 2010, Dan Dignard, an Occupational Health and Safety Inspector, issued an order to Ellis-Don Corporation, the general contractor on the London Health Sciences Centre ("London Hospital") Project to require certain work to be performed by persons who were apprentice or journeymen plumbers as that term is defined in O.Reg. 572/99 under the *Trades Qualification and Apprenticeship Act*. The applicant (the "Carpenters") have filed an appeal of that Order and seek in this application to have the Board suspend the Order pending the outcome of that appeal. By decision dated April 1, 2010, I issued a "bottom line" decision suspending the Order until the appeal is heard. This decision contains the reasons for that result.

2. The project involves, among other things, the construction of a laboratory on the 10th floor of the London Hospital. The construction of the laboratory has been assigned to Action Group Inc., which employs the carpenters who performed the work.

3. The work is described in the application filed by the Carpenters and is not disputed by any of the other parties. It is described as follows:

> 6. On the 10th Floor of the Project a new 58,000 square foot laboratory is being constructed. Bedco Lab designed the lab and procured fixtures. Action Group has been contracted to perform the onsite work in relation to the construction of the laboratory.

7. The lab contains specialty counters made from epoxy. The counters include sinks and faucets. The counters are fabricated off site and delivered for installation.

8. On March 3, 2010 Ministry of Labour Occupational Health and Safety Inspector, Mr. Dan Dignard, issued an Order requiring Ellis Don/Action Group to use plumbers certified under the TSSA to "install stainless steel cup sinks" and "install reverse osmosis faucets, hot and cold water faucets and tempered water eye wash stations" [the "Work"].

9. As noted above, the Order relates to two elements of work:

   (a) Affixing cup sinks to the counters; and

   (b) Affixing three types of faucets to the counters;

...

14. ... First, there are no waterlines that have been run into the counters in the lab. The waterlines are being installed by plumbers after the counters are installed.

15. Second, the Carpenters are not connecting anything to any water line or future waterline. The work being performed by the Carpenters is limited to affixing the sink and faucet to the counter.

16. Third, the sinks and faucets are prefabricated. Nothing the Carpenters are doing impacts their function or integrity as a sink or faucet.

17. The work performed by the Carpenters with respect to the cup sinks is as follows:

   (a) The counter has a pre-milled hole where the cup sink is to be affixed;

   (b) The Carpenter places a bead of silicone around the outside of the hole;

   (c) The Carpenter drops the cup sink into the pre-milled hole;

   (d) The Carpenter attaches a clip to the underside of the counter which holds the cup sink in place.

   This work takes less than 10 minutes to complete per sink and is performed intermittently and as needed throughout the construction of the lab.

18. The work performed by the Carpenters with respect to the faucets is as follows:

   (a) The Counter has a pre-milled hole where the faucet is to be affixed;

(b) The Carpenter drops the prefabricated faucet into the pre-milled hole;

(c) The Carpenter tightens a nut (with a washer) to the underside of the counter which holds the faucet in place.

This work takes less than 15 minutes to complete per faucet and is performed intermittently and as needed throughout the construction of the lab.

Background to the Order

4. The Carpenters assert that this entire dispute is in fact a jurisdictional dispute between it and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 593 (the "UA"). Although the details are disputed, all parties agree that this dispute was originally among the two unions, Ellis-Don Corporation and Action Group Inc. as a work assignment dispute. The UA believes that at one point it had a commitment that its members would perform the work that is the subject of the Order. Once members of the Carpenters Union began to perform the Work, the UA called an inspector seeking a ruling as to whether or not it was work that could be performed only by persons who were licensed as journeymen or apprentice plumbers.

5. I accept that the UA's motivation is an institutional concern about acquiring and protecting a certain work jurisdiction. There is nothing wrong with such a motivation. The UA is entitled to pursue any avenue it chooses, provided it does so in a forthright and open manner. In this case, there was no question in the Inspector's mind as to what was happening. The narrative of his Report commences with the statement: "Complaint about who is installing the fixtures and sinks in the laboratory area on the 10th Floor. Work is being done by Carpenters and the Plumbers feel it is their work". The Inspector's order, however, focuses exclusively on the Act and his view of the regulations under it. The issue in this application is whether or not the Order ought to be suspended rather than what the motivation of any of the other parties, other than the Inspector, was.

6. Having examined the Work, the Inspector determined that the Work is "part of the skill set for plumbers as set forth by Ministry of Training, Colleges and Universities [in the TQAA]". In addition, he concluded that the installation of spigots for gas, air, and vacuum was not part of the skill set for plumbers as defined by the Regulation under the TQAA. He referred to requirements under the Technical Standards and Safety Act ("TSSA"), which he stated he had no jurisdiction to enforce.

7. The Regulation governing the training of plumbers under the TQAA contains the following definition:

"plumber" means a person who,

(a) lays out, assembles, installs, maintains or repairs in any structure, building or site, piping, fixtures and appurtenances for the supply of water for any domestic or industrial purpose or for the disposal of water that has been used for any domestic or industrial purpose,

> (b) connects to piping any appliance that uses water supplied to it or disposes of waste,
>
> (c) installs the piping for any process, including the conveyance of gas, or any tubing for a pneumatic or air-handling system,
>
> (d) makes joints in piping, or
>
> (e) reads and understands design drawings, manufacturers' literature and installation diagrams for piping and appliances connected thereto,
>
> but does not include a person engaged in,
>
> (f) the manufacture of equipment or the assembly of a unit prior to delivery to a building, structure or site,
>
> (g) the laying of metallic or non-metallic pipe into trenches to form sanitary or storm sewers, drains or water mains,
> (h) the repair and maintenance of the installations in an operating industrial plant, or
>
> (i) the installation, removal, maintenance and testing of water meters, up to and including water meters with a 25 millimetre inlet and outlet.

8. For the purposes of this application, I have assumed that members of the Carpenters are not licensed journeypersons or apprenticed plumbers under the TQAA, and that members of the UA are.

An Analytic Framework

9. The Board's approach in dealing with a request to suspend an order has been consistent since the Act first gave the Board the authority to deal with suspension requests. It is set out most succinctly in the *Regional Municipality of Hamilton-Wentworth*, [1998] OLRB Rep. July/August 709:

> Three factors have generally been considered by the Board when determining whether a suspension of an order is appropriate in the circumstances:
>
> (a) whether the suspension of the order (or, alternatively, the failure to suspend the order) would endanger worker safety;
>
> (b) the prejudice to the parties if the order is or is not suspended; and
>
> (c) whether there is a strong prima facie case for a successful appeal of the order.
>
> It is fair to say that the onus lies upon the party desiring the suspension order to establish that such an order ought to issue. Furthermore, the decision of Adjudicator Herman in *General Motors of Canada Limited* (File No. 3666-96-HS, decision dated June 2, 1997) stands for the proposition that a certain degree of deference must be afforded to decisions made by inspectors for the

> purposes of considering the suspension of these orders pending their appeal. In the absence of some persuasive reason to interfere with that order pending the hearing of the appeal on the merits, the original order should not be suspended.

In dealing with an order that is based on the application of the provisions of the TQAA and the training requirements for certain skill sets and trades, the first and third of these tasks tend to converge. The Regulations for each trade under the TQAA define what training is needed and, given the incorporation of the requirements of the TQAA into the *Occupational Health and Safety Act*, the Board will likely find it unsafe for any person without appropriate training to perform the work. Neither Act gives the Board the authority to inquire into the appropriateness of the definition of a trade under the TQAA. Of course, the Board must still assess the likelihood of jeopardizing worker safety if an order is suspended in any given case.

10. Such cases also diminish the level of deference the Board ought to pay to the Inspector who made the order. In cases such as this, where the nature of the work is not in dispute, the issue is simply one of the application of an Act and Regulations to the work. The Inspector has no greater expertise than the Board, and the normally very important ability to observe the work while it is going on does not factor in the ultimate decision.

11. In analyzing this type of dispute, the Board's case-law provides the following general guidelines:

(1) The work must be defined in the portion of the trade regulation that defines the trade, rather than in the portion of the regulation that defines what is required for the apprenticeship training program: *TESC Contracting Company Limited*, [2007] OLRB Rep. July/August 817 (August 17, 2007). In this case, that applies only to the Plumbers' Regulation. The Regulation for Carpenters defines a carpenter by including all of the types of training attached as a schedule to the Regulation.

(2) If work is found in the definition of two different trades, even if one of them is compulsory and the other is not, members of either trade can perform the work: *E.S. Fox Limited*, [1989] OLRB Rep. July 738; *TESC Contracting Company Limited*, [2007] OLRB Rep. Aug. 817, and *Lockerbie and Hole Eastern Inc./Adam Clark Company Limited* (2008) CanLII 37561. I note that at paragraph 14 of its submissions, the Ministry accepts that as the appropriate method of analyzing this dispute.

(3) The interpretation of one or more regulations must be a functional one. That is, it is not sufficient to find that a general term found in one or more regulations refers to specific work simply because a general dictionary definition of the term in the regulation could lead to that result. The words in the definition of a trade must be read in the context of the nature of the work that is performed by each trade and the purpose of the TQAA:

> the provision of training so that apprentices and journeypersons will acquire an integrated set of skills necessary to perform the work defined in the regulation: *EllisDon Corporation* 2010 CanLII 11278 (Board File 3215-09-HS, March 3, 2010).

Analysis

12. The UA and the Ministry rely on subparagraph (a) of the Regulation set out above. Specifically, they assert that the Work is properly described as "fixtures and appurtenances for the supply of water". The Carpenters and Action assert that it is covered by the Carpenters' Regulation, where the definition of "carpenter" simply incorporates by reference the training schedules, which themselves refer to "built-in fixtures".

13. I accept that both terms could cover the work. Sinks and faucets are at the end of a water delivery system. They are also, in this case, affixed to the countertops on which they rest. The UA argues that the work should be seen as exclusive to the trade of a plumber because the fixtures are "an integral part of the water and plumbing system. Without faucets and sinks, the water system is inaccessible and unusable".

14. That is, of course, correct. It is not, however, the end of the analysis. Faucets and sinks are not simply perched on the top of a pipe. Unless they are supported in some fashion, the piping system would likely be compromised by the wobbling of pipes as water was released from a faucet or was held in a sink. Taps and faucets are built into the countertops to provide support and stability. They are also integral to the functioning of the counter. If the sinks and faucets are not level with the countertop, they will not rest securely in place, and fluids will build up on the countertop. If the seam between the countertop and the sink or faucet is not properly sealed, fluids may leak behind and beneath the counter and accumulate in the area underneath the counter. Such a prospect presents serious issues for a hospital.

15. The sinks and faucets are therefore attached to both the plumbing system and to the countertops in a way that is significant for the functioning of each. The skills of a plumber are necessary to connect the sink to the piping system to ensure that the water delivery system is secure and functioning, but are not necessary for the attachment of these fixtures to the countertop. The skills of a carpenter are needed to connect the sinks and faucets to the countertops so that they are level and the seam between the two is watertight, but not for the attachment of the piping system.

16. In *EllisDon*, above, at paragraphs 25 to 28, the Board conducted a similar analysis of a "bed locater", which was ultimately connected to this same hospital's electrical system. The Board concluded that for the purpose of a suspension request, it was more likely that the bed locater would be found to be a fixture that contained electrical components rather than an electrical fixture (and hence under the Carpenters' Regulation rather than the Electricians' Regulation). In this case, I do not need to go that far. It is sufficient that I conclude that it is very likely that the Board will ultimately decide that the Work is referred to under both Regulations. It is also my view that, given that the specific work covered by the Order is performed by persons who attach them to the countertop rather to the piping system, it falls more appropriately under the Carpenters' Regulation.

17. There is one exception to this analysis. Carpenters install the hot and cold water faucets on the sinks. Before doing so, they thread a copper pipe into the bottom of the faucet. The other end of that copper pipe will be attached to the piping system that brings the water into the sink. It seems to me that this is simply assembling the fixture before it is affixed to the sink. That is work that could be done on or off-site. Although it is a piece of pipe, the Carpenters do not connect the pipe to the water supply. Eventually the plumbers will connect the faucet (with or without the last piece of copper pipe threaded into the bottom of it, and ensure the integrity of the water delivery system from water intake to faucet.

18. I accept the Carpenters' argument that the work that the Inspector did not make the subject of his Order is not materially different from the work that he did make the subject of the Order. One such item was the "epoxy sink". The only difference between that sink and the ones covered by the Order, apparently, is that the sink is affixed to the counter before the counter is installed, rather than the other way around. The UA responds at paragraph 25 of its brief by saying:

> "Moreover, just because the Inspector did not issue an order with respect to the epoxy sinks does not assist the Carpenters in its suspension request. Epoxy sinks are mounted under the countertop prior to the counter being installed. Therefore, the sink and the countertop are installed simultaneously as a single piece. However, licensed plumbers will connect the piping systems to these sinks".

I am unable to understand why it makes a difference as to when the sink is affixed to the counter. In the case or the epoxy sink, as well as those covered by the Order, a licensed plumber will connect the piping system to the sink once the Carpenters are finished.

19. In addition, there was certain very similar work about which the Inspector did not make any sort of order, specifically the installation of gas and air spigots. The UA and the Ministry assert that the Inspector did not include them in his Order because they are not governed by the *Occupational Health and Safety Act*, but rather by the TSSA. The UA asserts that a gas fitter's licence is required pursuant to the TSSA. It is as unlikely that members of the Carpenters Union have a gas fitter's licence as it is that they would hold a Certificate of Qualification as a plumber or plumber's apprentice.

20. The fixtures are built-in fixtures. They are also, in my view, covered by subparagraph 1(c) of the Plumbers' Regulation, which includes: "The piping for any process, including the conveyance of gas, or any tubing for a pneumatic or air-handling system". The reality in this case is that the UA on this Project did not claim it. The only reference to such work under the UA's Provincial Collective Agreement is limited to "industrial process control systems". There is, of course, more extensive coverage of such work under collective agreements covering gas pipeline and distribution systems, but those collective agreements do not apply to a hospital. The Carpenters alleged that when asked about this apparent discrepancy, the Inspector advised them that he was not including it in the Order because the UA did not claim it. This tends to suggest that this dispute into which the Inspector was called, is entirely a mater of a jurisdictional dispute and not a question of worker safety at all.

21. Accordingly, I conclude that the Carpenters have a strong *prima facie* case with respect to the appeal of this Order. As noted, this goes a long way to dealing with the issue of whether the

suspension of the Order would endanger worker safety. The sole issue for the Inspector was whether or not the Work was covered by the Plumbers' Regulation. He was not concerned about the work methods employed on the site, nor was he troubled by a perception that the persons performing the Work were doing so in a manner that was unsafe or incompetent. The only safety concern arose from an interpretation of the Regulation, which I conclude is not likely one to be found correct. The Carpenters point out that their members have done the work frequently in the past, with no adverse consequences. I conclude therefore that worker safety will not be affected by suspending the Order.

22. The final issue is the prejudice to the parties if the Order is or is not suspended. The potential for prejudice is equally great for the Carpenters and for the UA. There is some prejudice to employer parties if the Order is not suspended. The UA is seeking to disrupt the commercial arrangements that made sense to Ellis-Don Corporation and Action Group Inc. It does so for what are legitimate institutional interests, but not a direct issue of safety *per se*. I find that there is slightly more prejudice overall if the Order is not suspended.

Conclusion

23. For all of these reasons, I suspend the Order No. 08816035 until such time as the appeal filed by the Carpenters in Board File 3746-09-HS is finally determined by the Board.

2822-06-G; 0445-08-G Canadian Union of Skilled Workers, Applicant v. **Atomic Energy of Canada Limited**, Responding Party

Construction Industry Grievance – CUSW referred two grievances to the Board, asserting rights as against AECL although the union only held bargaining rights with Bruce Power (who had a contractual relationship with AECL) – CUSW argued that (1) Bruce was its agent for executing collective agreements with contractors like AECL; and (2) the Board should find there is a collective agreement between CUSW and AECL so the union can reap the third party benefits of the specific agreements between Bruce and the AECL – The Board examined the language of the contracts and collective agreements and found that while there was the *possibility* of creating an agency relationship, none had been explicitly created by these parties – With respect to the third party benefits, the Board held that in the unlikely circumstance that it could fashion a remedy for a third party arising out of a contract not governed by the LRA, it would not be appropriate to do so here – CUSW had already obtained all that it bargained for with Bruce, and nothing in the AECL contract could or would deprive it of those rights – Grievances dismissed

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Ian J. Fellows, Dean Ardron* and *Jeff McGowan* for the applicant; *Tim Lawson, Jonathan Rabinovich* and *Laura Williams* for the responding party.

DECISION OF THE BOARD: March 18, 2010

1. These applications are referrals of grievances to arbitration pursuant to section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The Canadian Union of Skilled Workers ("CUSW") is a union that represents electricians and others employed by Bruce Nuclear Power Development ("Bruce Power"). CUSW has a collective agreement with Bruce Power respecting terms and conditions of employment for its members and persons covered by its collective agreement. The responding party, Atomic Energy of Canada Limited ("AECL") is a Crown agency which serves a number of functions. For the purposes of this case, it is engaged by Bruce Power as a contractor to perform certain work at the Bruce Power site. It entered into two contracts with Bruce Power, the "Re-Tube Agreement" and the "Water Lancing Agreement".

2. AECL performed certain work at the Bruce Power site, using persons in its direct employ. These persons are, in fact, represented by another trade union. CUSW claims the work on behalf of its members and argues that it should have been assigned to them pursuant to the provisions of the Collective Agreement between CUSW and Bruce Power. It argues that AECL has become bound to that Collective Agreement and accordingly, it may enforce its grievance against AECL directly.

3. There are a large number of issues in this case, some of which are detailed in an earlier decision in these applications dated August 4, 2009. In that decision, I restricted the initial hearing to two issues. The parties agreed to limit it further to a single issue: is AECL bound to a collective agreement with CUSW? If it is not, then of course, the grievance must fail. CUSW relies on two arguments. First, it argues that Bruce Power, through its Collective Agreement with CUSW, became the agent for CUSW for the purposes of executing a collective agreement with contractors such as AECL, and did so in this case. It argues further that the terms of the Re-Tube Agreement and the Water Lancing Agreement create a collective agreement between AECL and CUSW through its agent, Bruce Power. Second, it argues that the Board should find that there is a collective agreement between AECL and CUSW, as a means of enabling CUSW, as a third party beneficiary of the Re-Tube and Water Lancing Agreement, to obtain the benefits of the bargain that those agreements contemplate it should have.

4. I find that both these arguments fail because, regardless of the application of any of the legal theories argued before me, there are no facts to support either proposition.

The Agency Argument

5. The Collective Agreement between CUSW and Bruce Power requires Bruce Power "to contract and subcontract work [covered by the Collective Agreement] in accordance with Letter of Understanding No. 2". That Letter of Understanding provides:

LETTER OF UNDERSTANDING NO. 2

Between

BRUCE POWER LP

And The

CANADIAN UNION OF SKILLED WORKERS

> When Bruce Power LP contracts out work that may involve the use of tradespersons in the following classifications:
>
> Electrician Journeyman (including foreman and subforeman)
> Electrician Welder
> Electrician Apprentice
> Communication Electrician
> Lineman Journeyman (including Foreman and subforeman)
> Lineman Apprentice
>
> (a) Contractors who are signatory to an IBEW collective agreement* will have the work performed under the terms and conditions of the EPSCA/IBEW Collective Agreement using IBEW members.
>
> (b) All other contractors will have the work performed under the terms and conditions of the Bruce Power LP/CUSW Collective Agreement. All such contractors will be required to sign Appendix "B".
>
> The Labour Requirements process will be changed to reflect the above.
>
> Membership in EPSCA does not constitute "signatory to an IBEW collective agreement" for purposes of this collective agreement.

The "Appendix B" referred to in the Letter appears on its face to be a form of voluntary collective agreement between the contractor and CUSW, to be completed with the name of the contractor. The Memorandum of Agreement that settled the collective agreement and that was executed by the parties contained the text of "Appendix B" with a space at the bottom of the page for two signatures, one for CUSW and one for the contractor. In the complied and complete version of the collective agreement, the text of Appendix B is reproduced but those signature lines are omitted.

6. I accept that this provision *might* appoint Bruce Power as an agent for CUSW for the purposes of signing a collective agreement in certain circumstances. The form of voluntary recognition agreement contained in Appendix B appears to contemplate a document to be executed by CUSW directly and the contractor. However, the Collective Agreement states that: "All such contractors will be required to sign Appendix B". If a contractor were to sign a copy of Appendix B as part of its contract, or agree to incorporate the obligations of Appendix B as part of that commercial contract, then arguably Bruce Power's signature on the commercial contract *might* create a collective agreement by which Bruce Power signed as agent for CUSW. I do not wish to be definitive. These are not the facts before me, and any individual case will likely turn on other facts as well. However, I accept for the proposes of this decision that there may be some circumstances in which Bruce Power could be an agent for CUSW for the purposes of executing Appendix B.

7. In this case, Bruce Power and AECL executed the Re-Tube Agreement (by far the stronger of the two agreements for CUSW), which included many pages of detailed provisions, one of which related to labour relations. Paragraph 7.13(e) is the key provision. (It appears in the contract as a single paragraph but for ease of reference I have added some spacing and emphasis in this decision)

7.13 Labour and Products

...

(e) [Bruce Power] acknowledges and agrees that the Bruce Power Collective Agreements are binding upon [it]..... The Contractor shall perform, and shall cause the Subcontractors to perform, all aspects of the Work at the Bruce Power Nuclear Generating Station under or pursuant to the terms of any applicable Bruce Power Collective Agreement (other than the Power Workers' Union and The Society of Energy Professionals), or as otherwise directed, ordered or otherwise required by the Ontario Labour Relations Board or other Governmental Authority.

For any Work which is within the jurisdiction of BACU or CUSW pursuant to the Bruce Power Collective Agreement with BACU or CUSW, respectively, *the Contractor shall not directly perform such Work* but shall subcontract such portion of the Work

(a) in the case of Work which is within the jurisdiction of BACU pursuant to the terms of the Bruce Power Collective Agreement with BACU, to a Subcontractor that has executed and delivered to BALP Appendix E of the Bruce Power Collective Agreement with BACU and

(b) in the case of *Work which is potentially within the jurisdiction of CUSW* pursuant to the terms of the Bruce Power Collective Agreement with CUSW, either to a Subcontractor that

(1) is party to a collective agreement with IBEW, in which case the applicable Work will not be required to be performed pursuant to the terms of the Bruce Power Collective Agreement with CUSW or

(2) has executed and delivered to BALP Appendix B of the Bruce Power Collective Agreement with CUSW. For greater certainty, this section 7.13(e) shall not in any way reduce the Contractor's obligations to BALP to perform the Work in accordance with the Contract Documents.

8. In my view, this does not bind AECL to the Collective Agreement. The second sentence contains a general phrase (upon which CUSW relies) that requires that the contractor shall perform, and shall cause the subcontractors to perform, "[work] under or pursuant to the terms of any applicable Bruce Power collective agreement". It is appropriate to interpret the phrase "under or pursuant to" as two different terms which have different meanings. To do otherwise would be to conclude that the Collective Agreement contained an unnecessary redundancy. Performing work "under" a collective agreement suggests that the work is performed in a manner consistent with the obligations created by a collective agreement binding on the two parties. The phrase "pursuant to the terms of any collective agreement" suggests that the work is to be performed in accordance with or adopting the terms and conditions of a collective agreement without being bound by it. Those meanings are the ordinary and common way of using those phrases in the world of construction labour relations. Looking exclusively at the second sentence of paragraph 7.13 (e) would suggest that the contractor work "under" (i.e. bound by) or "pursuant (i.e. not bound) to a collective agreement. It

is trite law to say that the unilateral adherence to the terms and conditions of a collective agreement does not create a collective agreement without some further act or document (see, for instance, *Ecodyne Limited* [1979] OLRB Rep. July 629).

9. That interpretation is reinforced by the specific provisions of subparagraph 7.13 (e) with respect to CUSW's work. AECL has contracted that it "shall not directly perform such work". If it cannot perform the work, it must subcontract it. AECL has agreed that it will require its subcontractors performing CUSW work to execute and deliver to Bruce Power the Appendix B Agreement. (I note that the requirement to deliver Appendix B to Bruce Power, and not CUSW, reinforces the notion of Bruce Power as an agent for CUSW.) However, the Re-Tube contract specifically does not require AECL to deliver an executed copy of Appendix B to Bruce Power, presumably because its employees will not do the work covered by the CUSW Agreement.

10. Hence, a proper reading of the commercial agreement is that AECL and Bruce Power were both well aware of CUSW's Collective Agreement and the restrictions on Bruce Power's ability to subcontract that work. Both looked at the obligations under the Agreement for a contractor to execute Appendix B, and both agreed that AECL would not do so, but would require its subcontractors performing such work to execute Appendix B.

11. Thus, even if one sees Bruce Power as an agent with the authority to enter into a collective agreement on behalf of CUSW, it specifically chose not to do so in this case. The commercial agreement with AECL specifically excludes any such possibility. (Of course, I make no comment on whether this was appropriate for Bruce Power. That question is not before me and Bruce Power took no part in this proceeding. Specifically, I make no finding that Bruce Power did or did not violate its Collective Agreement in any manner.)

12. The second agreement is the Water Lancing Agreement. Counsel for CUSW conceded that if he were not successful in persuading the Board that a collective agreement had been created by the Re-Tube Agreement, it was unlikely that he would succeed under the Water Lancing Agreement. The appropriate provision in that agreement is paragraph 38:

> **38. Labour Relations**
>
> Site Services shall be carried out in accordance with applicable Federal and Provincial labour laws. In addition, collective agreements are currently in force for each of the Society of Energy Professionals (Society), the Power Workers Union (PWU) and the Building Trade Unions (BTU) covered by EPSCA (Electric Power System Construction Association). These unions generally have jurisdiction over engineering/professional work, operations, trades, and construction trades respectively.
>
> These agreements are available on request but are subject to change from time to time as these agreements are renewed. AECL acknowledges the existence of such collective agreements. Bruce Power shall not be in breach of its obligations under this Agreement or a Commercial Authorization if its actions or inactions are in accordance with the terms of such collective agreements; provided, that Bruce Power shall give AECL written notice as soon as reasonably practicable after it becomes aware of a conflict between

> Bruce Power's obligations hereunder or under a Commercial Authorization and its obligations under such collective agreement(s).

13. CUSW is not referred to at all in this provision, and certainly does not regard itself as one of the Building Trades Unions. Even if it were specifically identified in the clause, the provision only protects Bruce Power. It states that: "Bruce Power shall not be in breach of its obligation under this Agreement". In other words, it does not refer to the existence or need to comply with any collective agreement at all. Indeed it contemplates that there may be a conflict between the Water Lancing commercial agreement with AECL and the terms of Bruce Power's collective agreement. AECL is required to do simply do whatever it has to do to ensure that Bruce Power does not suffer any liability. Whether or not it has accomplished that fact is a matter between AECL and Bruce Power, and may give rise to remedies under the contract. It does not, however, create a collective agreement.

14. Accordingly, AECL has not been bound to a collective agreement by Bruce Power acting as agent for CUSW by virtue of any of the Commercial Agreements they signed.

Third-Party Beneficiary

15. CUSW's second agreement is that it is the beneficiary of a provision in the Commercial Agreements and that as such, they ought to be able to obtain directly from AECL by way of a grievance what was promised to it. The Board, of course, is a creature of statute and in this case, acting under section 133, has only the authority of an arbitrator under a collective agreement. The Board does not have the power to enforce rights generally or to exercise any of the inherent powers of a superior court of record. CUSW acknowledges that the Board, as arbitrator, may only grant a remedy for a violation of a collective agreement. It argues, therefore, that the Board should find a collective agreement to exist arising out of the Collective Agreement and Commercial Agreements, as a means by which it can enforce AECL's obligations to provide it with the benefit it contracted to provide in its commercial contract with Bruce Power. In making this argument, CUSW relies on two decisions of the Supreme Court of Canada: *London Drugs Ltd. v. Kuehne & Nagel International Limited*, [1992] 3 S.C.R. 299 and *Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.*, [1999] 3 S.C.R 108. Both of these decisions dealt with relaxing the rules of privity of contract to allow a third-party beneficiary to claim rights to which it was entitled under an agreement between the two contracting parties.

16. Such an argument raises a host of legal issues. The most basic problem with the argument is the definition of a collective agreement in the Act (an agreement in writing between an employer and a trade union) and the very limited occasions under which an arbitrator, on agreement of the parties, or pursuant to an order of the Board under section 43 of the Act, may "settle" the outstanding terms of a collective agreement that becomes binding on the parties. Even assuming that the Board had the jurisdiction to find that a collective agreement existed for the purposes of fashioning a remedy to a right that seems to exist in a contract not governed at all by the *Labour Relations Act, 1995*, it would not be appropriate to do so in this case.

17. First, CUSW has obtained no benefit under the Water Lancing Agreement. Bruce Power did, but that is not for the benefit of any third party. The only benefit, if it can be described that way, under the Re-Tube Agreement is that AECL will not, with its own direct employees, perform any work properly assigned to CUSW members. The provision of the Re-Tube Agreement does not obligate AECL to sign a collective agreement with CUSW, or does not require it to observe terms and

conditions of the agreement, because it is not contemplated that it will ever employ persons performing work that would be covered by that collective agreement.

18. More importantly, the underlying concern of the Supreme Court of Canada in both cases referred to above is essentially an equitable one. The Supreme Court did not eliminate the entire doctrine of privity of contract, but said in general terms there may be circumstances in which the doctrine should be relaxed and suggested certain principles on which any such relaxation should be based. It did so in very narrow terms on the basis of the facts before it in those two cases.

19. In *London Drugs*, *supra*, London Drugs sued the employees of Kuehne and Nagel because it was barred by a limitation of liability in its storage and warehousing contract with Kuehne and Nagel. It had bargained for storage services from Kuehne and Nagel (which, being a corporation, could only carry out its obligations through its employees), that included a limitation of liability. That limitation of liability presumably lowered the cost of its warehousing fee. The employees were negligent causing damage to London Life's property. London Life sought to avoid the effect of the limitation of liability in its contract with Kuehn and Nagle by suing the employees in negligence. The Court found that employees were third-party beneficiaries of that limitation of liability and did not allow London Drugs to rely on the doctrine of privity of contract to prevent them from relying on it. In *Fraser River*, *supra*, Fraser River's insurance contract contained a prohibition on subrogated actions. The insurer paid Fraser River for Can-Dive's damage, but then persuaded Fraser River to sue on its behalf. Although it had bargained for an insurance contract that would not allow it to sue third parties (and presumably benefited from the higher insurance premium), it nonetheless sought to avoid that benefit in its contract. The Court permitted Can-Dive, although a third party to the contract, to rely on the clause which had been inserted for its benefit.

20. In both cases, the plaintiff in the original action was attempting to avoid a limitation, and one which must inevitably have played a role in determining the final terms of its agreement with its contracting party. London Drugs paid less and Fraser River's insurers charged more for its contracts. Those prices were agreed upon, knowing that the third party (even if the individual employees or the potential lessor of the barge that Fraser River rented out, could not be identified) were the very ones from whom harm in the form of negligence might arise. The Court found that it was inappropriate to allow a contracting party to obtain more than it had bargained for at the expense of persons who were specifically protected by a term of the agreement, even if they were not parties to that agreement.

21. That analysis is not applicable here. There is no need to create a structure to provide a remedy for CUSW. It has already obtained all that it bargained for with Bruce Power, which is all that is "protected" (if at all) by the commercial agreements. CUSW bargained with Bruce Power with respect to the kinds of contracts and subcontracts that Bruce Power would let. Its bargain with Bruce Power took into account that restriction in the final calculation of the cost of the deal for both sides. Nothing in the subcontract to AECL deprives the Union of its rights under that contract with Bruce Power. CUSW is the contracting party and may seek to enforce whatever rights it has under that contract directly with Bruce Power. Nothing AECL does can diminish those rights or deprive CUSW of what it bargained in its collective agreement with Bruce Power. If the contract with AECL is in breach of the Letter of Understanding No. 2, then Bruce Power will be liable to pay the appropriate damages. At this point, these damages are all that CUSW seeks from AECL. CUSW has lost nothing that it bargained for. It still has a remedy (if indeed it has one) against the party with whom it made its contract. It is not deprived of anything to which it is entitled. Accordingly, even if I were able to

"find" a collective agreement as a part of a remedy, I would not do so, as there is no need to do so in this case.

22. For these reasons, I find there is no collective agreement between AECL and CUSW. In the absence of a collective agreement, these grievances must be dismissed.

0474-08-R; 0493-08-U; 1866-08-U Communications, Energy and Paperworkers Union of Canada, Applicant v. **Boehmer Box LP**, Responding Party

Certification Where Act Contravened – Discharge for Union Activity – Unfair Labour Practice – During the course of CEP's organizing campaign, Boehmer and some of its employees distributed written communications which the union alleged were false and misleading and which implied that unionization would undermine the viability of the enterprise and would therefore compromise employees' job security – CEP lost the representation vote by a large margin, despite obtaining the support of a majority of the employees as of the application date – The Union alleged that literature distributed by, or with the approval of, Boehmer threatened the livelihood of employees and had a chilling effect on the voters – The issue before the Board was whether Boehmer violated the Act and if so, whether CEP was entitled to remedial certification despite having lost the representation vote – A majority of the Board found that a number of events at the workplace did not constitute unfair labour practices; however, the written communications and the links made in those communications between unionization and job security did constitute a violation of the Act – The majority found that neither a second representation vote alone nor the Board's other customary remedies in combination with a second vote would adequately respond to the threats raised by Boehmer's written communications – The union was entitled to remedial certification – Certificate issued

BEFORE: *Patrick Kelly*, Vice-Chair, and Board Members *J. A. Rundle* and *S. McManus*.

APPEARANCES: *J. James Nyman* and *Daniel McBride* for the applicant; *Michael S.F. Watson*, *Andrew D. Newman* and *Mark Caines* for the responding party.

DECISION OF VICE-CHAIR PATRICK KELLY AND BOARD MEMBER S. McMANUS: March 3, 2010

1. Board File No. 0474-08-R is an application for certification under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended ("the Act"). Board File No. 0493-08-U ("the first complaint") and Board File No. 1866-08-U ("the second complaint") are unfair labour practice complaints under section 96 of the Act. The first complaint is mainly over several written employer communications to employees in the course of an organizing campaign. The second complaint deals with the treatment of an employee organizer months after the representation vote in the application for certification. By agreement of the parties, all three matters were consolidated and heard together.

Background

2. One of the central issues is the application, if any, of section 11 of the Act. Section 11 deals with the Board's authority to provide remedies where it is satisfied that, due to an employer's misconduct, the true wishes of the employees were not likely reflected in the representation vote. The applicant (or "the union" or "the CEP")) lost the representation vote by a large margin, although it had obtained approximately 66 per cent support of employees for the application for certification as of the date it was filed. The union maintains that the real reason for the lost vote is the alleged misconduct of the responding party ("the company"), and the effect that misconduct had upon the voters. In particular, the union contends that certain literature distributed by, or with the alleged approval of, the employer, threatened the livelihood of the employees if they chose to unionize. Among other remedies, the union seeks remedial certification pursuant to section 11.

3. The company denies engaging in any unlawful misconduct, and requests that all three applications be dismissed.

Evidence

4. By agreement of the parties, the union presented its evidence first. The witnesses who testified on behalf of the union were: Daniel McBride, the union's National Representative who was responsible for the 2008 organizing drive of the company's employees; Tom Murray, the lead inside employee organizer on the union's organizing campaign; and Claude Ouelette, an employee in the Finishing Department and also a member of the union's inside organizing committee.

5. The company called the following witnesses: Mark Caines, President and Chief Operating Officer; Janet Magee, the Manager of Human Resources; Mark Szymanowski, a Team Leader in the Maintenance Department; Mark Young, the Director of Operations; and Sean Foster, a forklift driver in the Shipping Department.

6. At the outset of the union's case, we made an order excluding witnesses.

7. The union has tried and failed on two occasions in the past to organize the company's employees. In the union's 2003 campaign, approximately 52 per cent of employees signed membership cards; by comparison, the 2004 campaign generated about 47 per cent membership. In both cases, applications for certification were made and the vote went against the union. The union was only able to obtain abou 40 per cent of the counted ballots cast in the 2003 vote, and about 38 per cent in the 2004 vote. There was also at least one other attempt to unionize the plant by another trade union in 1997, in which the trade union was able to muster just over 44 per cent membership, but gained only 17 percent of the counted ballots cast in the representation vote.

8. As we have noted, approximately 66 per cent of employees signed membership cards in this application for certification. The applicant, however, managed to attract only about 33 per cent of the counted ballots cast in the vote on May 15, 2008.

9. The company is in the business of manufacturing folding cartons for businesses such as Loblaws, Sobeys, Metro and others in the grocery industry. The majority of its clients are "co-packers", contractors who produce food items mainly for the well-known grocery chains. The

company operates out of two locations in Kitchener, at a manufacturing plant on Trillium Drive ("the plant") and at a warehouse on Battler Drive ("the warehouse"). At the time of the union's organizing drive, the workforce consisted of approximately 180 employees, 150 of whom were production workers in the plant. The employer's shipping function straddles both the plant and the warehouse, and there are shipping employees working in each location.

10. The company and Strathcona Paper in Napanee were once owned by the Roman Corporation. The Roman Corporation sold both enterprises to Atlas Holdings. The CEP had bargaining rights and was a party to a collective agreement at Strathcona Paper during the relevant period.

11. Except for a very brief period in April 2008 the plant's production employees have for years operated on a continuous, rotating shift basis from 11:00 p.m. Sunday until 11:00 p.m. Friday. In around January 2008, the company reduced from a five-day to a four-day operation due to a downturn in business. However, it resumed its five-day schedule within a few weeks after the representation vote. The reduction of the work week and the subsequent return to five-day operations were not called into question by the union in these proceedings.

12. Mr. Caines has been with the company since 2005, initially as the Chief Operating Officer. When he joined, the company was in serious financial trouble. Mr. Caines turned his mind to making operational changes while his superior, Gail Morant[1], dealt with the company's banks. Mr. Caines took on the additional responsibilities of President in 2006.

13. Mr. Caines was not present in the workplace during the other three failed organizing drives, but he was aware of them. He has had significant prior work experience in union environments and in collective bargaining. However, the union's organizing drive that is the subject of these proceedings was his first.

14. Mr. Caines has six Directors and one of three Area Managers – Ms. Magee in Human Resources – reporting to him[2]. They form the management team. One of the Directors, Mark Young, runs the plant on a day-to-day basis. There are also nine or ten Team Leads. Mr. Caines described them as "the go-to persons". They deal with production problems and issues raised by the employees in the course of the shift, and they help train employees as well. They are in the bargaining unit. There used to be persons engaged as Supervisors by the company, but Mr. Caines eliminated that position in the organization, and some of the Supervisors' responsibilities devolved to the Team Leads.

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[1] Ms. Morant was the Chief Executive Officer of CanAmPac, a holding company associated with Boehmer Box. The details of that association were not canvassed in the evidence. At the time of the organizing drive, Ms. Morant was located in Toronto. She attended at the plant on a few occasions during the union's campaign. She did not testify in these proceedings.

[2] One of the Area Managers who does not report directly to Mr. Caines is Joe Piotto. Mr. Piotto, who did not testify, was responsible for the Shipping Department at the time of the organizing drive. He recommended Sean Foster for hire in the Shipping Department a few months prior to the commencement of the union's campaign. There was no dispute in this case that the Shipping Department employees were particularly vocal in their opposition to the union. As will become evident later in this decision, Mr. Foster authored a document critical of unionization that referred to a number of unionized plant closures in the Kitchener-Waterloo area.

15. The company has an Employee Committee consisting of management and non-management employees. It had been in place well before the union's organizing drive. Mr. Caines and Mr. Murray, the lead inside union organizer, were and remain members. The Employee Committee meets monthly and deals with a variety of workplace issues, including employee complaints. Minutes of the meetings are taken and posted in the workplace.

16. After some initial consultation between Mr. McBride and Mr. Murray concerning the unionization of the workplace, an inside organizing committee of seven individuals was established in about March 2008. After further discussions between Mr. McBride and the inside organizing committee, a decision was taken to launch the organizing campaign on Tuesday, April 22, 2008.

17. According to Mr. Murray, the reason for selecting April 22, 2008 was because of a change in the shift schedule announced by Mr. Young, the Director of Operations, on April 14, 2008. The effect of Mr. Young's announcement was that, as of Sunday, April 20, 2008, the company would no longer start the work week on Sunday nights and end on Friday nights. Instead the work week was to commence on Mondays at 7:00 a.m. and end at 7:00 a.m. on Saturdays. The union wanted to start the organizing campaign as employees were coming off the night shift and other employees were coming to the plant to begin their day shifts. Thus, instead of launching the campaign on Monday, April 21, 2008, the union began organizing on the following day.

18. Mr. Young introduced the shift start change mainly out of concern about poor attendance on the Sunday night shift. He was also concerned that the Sunday night shift did not include maintenance personnel in the event of machinery malfunction during the shift. According to Mr. Murray, Mr. Young had raised the idea of starting the work week on Monday mornings with the Employee Committee well before he announced the change publicly, and was told by the employee members of the Employee Committee that they did not like the idea. On the other hand, Mr. Young, Mr. Caines and Ms. Magee, all of whom were members of the Employee Committee and attended its meetings, testified that the issue was never proposed to or discussed by the Employee Committee. The minutes taken of the Employee Committee meetings appear to support their testimony. The only discussion concerning the plant shifts reflected in the minutes had to do with a debate about alternatives to the rotating shift schedule. Nothing is recorded about the weekly shift start day.

19. As we have alluded to earlier, the change in the shift start day implemented by Mr. Young lasted for a very short time. Mr. Young testified that he decided to revert back to the old schedule after receiving many employee complaints the week following the announcement, and consulting with Mr. Caines on Friday, April 18, 2008. He took the weekend to think it over, and on Monday, April 21, 2008, he advised Mr. Caines of his intention to return to the Sunday night shift start. Mr. Caines indicated that that was fine with him, but that he wanted to see the written notice to employees before it was issued. Mr. Young worked on a draft, but by the time he obtained Mr. Caines' approval, the Human Resources staff had left for the day. Mr. Young decided to postpone posting the notice until he had given Human Resources an opportunity to review his document, as was his practice. However, when he arrived at the plant the next day, the union drive was underway. Despite his misgivings about how the reversion to the old schedule might now be interpreted, Mr. Young still arranged for Human Resources to review the draft, and then he posted the notice later that day.

20. Early on the morning of April 22, 2008, Mr. McBride and four members of the inside organizing committee, together with two other union representatives, showed up at the plant and

began distributing union leaflets to employees at the plant. The leaflets identified all the inside organizing committee members by name, and included photographs of six of them. The union organizers lined up on both sides of the entrance to the plant's driveway, and attempted to engage the employees as they drove in and out of the plant. Later that morning, Mr. McBride, with the consent of the seven inside organizers, notified Mr. Caines in writing of the union's decision to launch an organizing drive, and identified the individuals on the inside organizing committee.

21. Mr. Caines arrived at work at about 6:45 a.m. and immediately recognized what was going on. He testified that he felt disappointment. He further testified that he gathered the management team together, and that some of them had had experience with the previous organizing drives. They discussed their understanding of the "Do's" and Don'ts" that management ought to heed in such circumstances, and Mr. Caines endorsed those views. Despite Mr. Caines' and Mr. Young's evidence that the meeting included Ms. Magee, the Human Resources Manager, she testified that she did not attend. She testified that she met with Mr. Caines in the afternoon, and that she did not recall what that meeting was about.

22. Ms. Magee also testified that she was not surprised to discover the union outside the plant on April 22. She told the Board that there had been rumours circulating about the union for several months. Apparently she did not share these rumours widely, because Mr. Young, the person responsible for the day to day operation of the plant, indicated he was very surprised by the organizing drive.

23. According to Mr. McBride, the inside organizing committee set about obtaining membership cards from employees. The organizing drive went very well in the early stages compared with the other failed organizing drives at the workplace. Tom Murray, the lead on the committee, collected the cards from the others and kept them, eventually remitting them to Mr. McBride.

24. On or about April 25, 2008, three days after the commencement of the organizing drive, Mr. Caines wrote a memorandum to all the company's employees which was sent to them by courier to their residences. The full text of the memorandum is set out in Appendix I to this decision. In his communication, Mr. Caines began by stating that the company's employees had a right to choose whether or not to be represented by a trade union, and that if they wished to refuse unionization, they were protected against intimidation and coercion by any union organizers. This is then followed by observations by Mr. Caines regarding job security in a period of difficult market conditions, and how the success of the business and satisfied customers ensure the employees' job security. (Those comments were echoed somewhat near the end of the memorandum where Mr. Caines suggested that the company would be in a better to position to deal with its business challenges if it were able to continue to enjoy direct communication with the employees without the intervention of a third party.) The memorandum goes on to point out what, from the company's perspective, are the disadvantages of choosing unionization, including the payment of union dues, the possibility of a closed shop, the difficulties in terminating bargaining rights once established, restrictions on direct communication between the employer and the employees, and so forth. Mr. Caines also emphasized what he saw as the advantages and benefits of the Employee Committee.

25. Near the end of the communication, Mr. Caines pointed out that the company had taken steps to ensure its long-term success in a very competitive market, and that it had achieved a

substantial degree of openness. The union was particularly concerned with Mr. Caines' concluding remarks:

> If we work together to make Boehmer Box a better place to work, our organization will be a better place for our customers to do business with so we can grow and sustain our business.

26. On or around April 28, 2008, a large number of copies of an anonymous letter concerning the closure of several unionized Kitchener area manufacturers was placed in the employee lunchroom, change room and various other common areas of the plant. These copies remained in the plant for at least a couple of days. The letter reads:

BF Goodrich-Closed

Budd Automotive-Closed

Lazy Boy-Closed

VSA (Apex)-Closed

LEDCO-Closed

Boehmer Box????????

What do the top 5 have in common?

They were closed down even with "union protection". At LEDCO, the employees were approached about taking a paycut to keep the plant open. The overwhelming response was yes, but the union would not allow the vote and the plant was closed. Like so many other manufacturing plants in the area, jobs were lost. They had an opportunity to at least fight to keep the plant running and stay employed, to work with the company, but were not allowed to act or vote for how they truly felt.

There was a time and place for a union, but not now. There are too many labour laws to protect the worker and their rights. The union has already stated that they will not fight for wages or benefits, so what are they going to do? They will take a cut of your existing wages to do what? Go to management to fight for something that in the long run, they really can't win? The other thing a union will do is to make seniority the way things are done. If layoffs happen, it will be only the new employees that this will affect, not the least effective employees. A strong partnership between companies and workers should be to make the company stronger, not protect the weak and lazy. If a company decides to shut the doors, will the union help feed your family? Ask the people that were at the above mentioned companies how much they have heard from the unions since the doors were shut. A STRONG EMPLOYEE committee will do the same for you without taking your wages.

THINK BEFORE YOU VOTE!

27. Mr. Murray, the lead inside organizer, testified that once the anonymous letter was in the hands of his co-workers, "they ran from me like the plague" and stopped speaking to him. He estimated that the union obtained no more than about 12 to 13 membership cards after April 28, 2008 or thereabouts. Mr. Murray's co-worker and fellow inside organizer, Claude Ouellette, agreed that employees were no longer willing to talk to him after the letter appeared.

28. As it turns out, the anonymous letter was authored by Sean Foster, an employee in the plant's Shipping Department. Mr. Foster had been hired in January 2008. He worked for the company up until the representation vote on May 15, 2008, following which he then took up employment with Sun Life Insurance. When he learned of the union's organizing drive and read the union's literature, he testified he felt he ought to communicate with his co-workers, and give them the benefit of the views of one of their peers. The plant closures referred to in his letter did in fact occur in the Kitchener-Waterloo area, and involved unionized businesses.

29. Mr. Foster testified that he alone composed his letter, and that no one from management had any part to play in its conception or content. He drew upon the experience of friends and acquaintances affected by some of the plant closures, as well as what he had learned in the media about the closures. He composed the letter at home, and brought about 10 to 15 copies to the plant. He testified in cross-examination that he showed a copy to a Team Leader by the name of Randall for the purpose of gaining approval to distribute the other copies. Randall expressed approval of the content, but said he wanted to take it to Mr. Piotto, his boss in the Shipping Department, to see if it could be disseminated more broadly. When Randall left, Mr. Foster went ahead and left copies in one of the company's lunchrooms. Randall returned and told Mr. Foster that Mr. Piotto would not allow the distribution of his letter. Somehow, many more copies of the letter were produced and distributed throughout the plant, and they remained there for two days. Mr. Foster did not know who made the many extra copies or distributed them. He speculated that Randall may have done so, because he liked what Mr. Foster had written.

30. Upon learning of the anonymous letter, Mr. McBride instructed legal counsel to write a letter of protest to Mr. Caines. By correspondence dated April 30, 2008 counsel for the union did so, and requested that Mr. Caines remove all copies of the anonymous letter and tell employees that the company disassociated itself from the letter's content. A reply letter dated May 1, 2008 from counsel for the company denied that the employer had had anything to do with the drafting or the distribution of the anonymous letter, and advised that the company would remove any copies of the letter as and when discovered in the plant. There was no evidence, however, that Mr. Caines subsequently told employees that the company disagreed with, or otherwise disassociated itself from, the contents of the anonymous letter.

31. According to Mr. McBride, the organizing campaign "dried up" at this point. He said that, after April 30, 2008, the union obtained only "a couple" of membership cards. We have reviewed the membership evidence filed with the application for certification. The union filed 115 membership cards for a bargaining unit of 173 or 174 individuals. The union's most significant success occurred in the period from April 22 to April 25 when it signed up 90 members (50 on April 22, 20 on April 23, 14 on April 24 and 6 on April 25). After April 30, 2008, and up until May 6, the last day on which an individual signed a card, the union managed to attract only eight more members.

32. Mr. McBride and members of the inside organizing committee, together with other union representatives, appeared at the plant on May 9, 2008, the day after the application for certification was filed. They distributed leaflets in the morning and in the afternoon. The leaflets advised of a strong majority of support from among the employees, the filing of the application for certification and the upcoming secret ballot vote. The union alluded to "false and misleading material", and warned that the company would make every effort to convince employees to vote against the union, including the use of trickery, fear and inducements.

33. On the same day, May 9, Mr. Caines arranged to send by courier to all employees a second memorandum, the full text of which is reproduced at Appendix II of this decision. It too was delivered to the employees' homes. Although in his examination in chief Mr. Caines said that he was the author of all of the company's correspondence during the organizing drive, in cross examination he said the May 9 document was a collaborative effort with his superior, Ms. Morant. In fact, she did the first draft of the May 9 memorandum (and, as it turned out, the subsequent memorandum described below). Mr. Caines admitted that, in the process of collaborating on the letter, he and Ms. Morant had reviewed the Sean Foster letter, among the documents sent to Mr. Caines by counsel for the union on April 30, 2008. According to Mr. Caines, Ms. Morant was primarily responsible for the references in the memorandum to closures of plants where the CEP represented workers, including Cascades where, according to the memorandum, workers had earned far less than the company's employees. Mr. Caines testified he and Ms. Morant were aware of other closures involving non-union plants, but that they did not include any reference to those plants in the memorandum. Below is an excerpt that deals with the unionized plant closures and the issue of job security:

> The CEP has promised that the starting point for negotiations is the present compensation package. With folding carton plants closing and the economy in a downturn, how realistic are these promises? Boehmer Box employees could pay real dollars of their hard-earned wages in the form of union dues in the hope of negotiating something that may never be achievable or may not even cover the cost of the union dues. **There is no guarantee the union can get everything, or anything, that it promises you. It is not the union that pays your wages and benefits.** The pie does not necessarily get bigger or divided better simply because a union is involved. As a business, we have to live in a world of competitive realities and it is our customers who determine the size of the pie that can be divided. You have seen the front-page news about how many manufacturing plants are closing. It's a company's customers that determine the businesses that survive and thrive and those that don't because our customers **CHOOSE** to do business with us based on what we deliver to them in quality and service for a market price. After all, it is our customers who pay our bills.
>
> Have the CEP also told you about the jobs lost and CEP members put out of work when many plants represented by the CEP such as Abitibi, Bowater, Crown Packaging, Cascades closed? Have they told you what they did for the CEP members after these plants closed? **If not, why not?**
>
> Have they told you about how many CEP members they have today in these organizations compared to five years ago, or two years ago? Job security doesn't come from a union. Job security rests with serving our customers and growing our business. This is particularly true in a difficult market and

> weak economy. We have to make sure that we have people in place that have our customers' interests at heart. That is what protects jobs – giving our customers what they need, when they need it and at a competitive price.
>
> The CEP has promised protection of wages and benefits. Have the CEP told you that during CCAA Strathcona Paper's workers represented by the CEP agreed to freeze their defined benefit pension plan and that these were benefits given up? Did Boehmer Box employees give up any benefits at that time? The answer is NO. Why did this happen? Because economic reality determines if companies survive. Not unions. If wages and benefits are too high and customers can't afford to pay for them, then companies don't survive. Job security does not rest with words. It results from deeds. You want a management team that understands economic reality and makes the difficult but right decisions to scale the company's cost structure to ensure long-term competitive viability.
>
> (emphasis in original)

34. Later in the memorandum, Mr. Caines compared the fortunes of the company with its competitors. He stated:

> The CEP asks whose interest management has at heart. Think about it. Management has the long-term interests of the employees at heart by making sure we have a viable business to serve our customers and pay wages and benefits. Boehmer Box's volumes are up this year over last. We have secured new business. We are doing what some of our competitors such as Somerville Packaging, Cascades, H.J. Jones and Crown Packaging failed to do. That is, to make sure that the business is sustainable with customers who can provide the job security that we all seek.

35. The union kept up its presence at the entrance to the plant leading up to the representation vote on May 15, 2008. The union also filed and delivered the first of its two unfair labour practice complaints on May 12, 2008, referring to both of Mr. Caines' communications to employees as well as the anonymous letter. On May 13, 2008 the union issued its third set of leaflets. They appear to comprise a response to Mr. Caines' communication the day prior, at least in part. In this leaflet, the union derided the company's Employee Committee, and claimed that the union would institute a real grievance process and a real seniority system. The leaflet also alluded to the recent policy change and reversal concerning the company's shifts. Finally, with respect to plant closures, the union claimed that such closures were not attributable to unionization but rather to the loss of customers and/or demand for products and/or bad management.

36. Mr. McBride found the employees were less open to taking these leaflets. Individuals who previously had been open to discussion with representatives of the union now were not willing to engage. Mr. Murray noticed Ron Muhlman, the Director or Head of Maintenance inside his corner office taking photographs of the outside activities. In the course of his testimony, Mr. Caines acknowledged the taking of photographs, but stated that the purpose was to identify non-employee participants in the organizing drive so as to prevent a repeat of an earlier incident during the union's 2004 organizing campaign in which non-employee union representatives were found wandering around in the plant without authorization.

37. On May 14, 2008, the day prior to the vote, Mr. McBride and other union representatives handed out yet another leaflet at the plant's entrance. This one dealt primarily with details of the vote, its location, the times of the polls, the question on the ballot and so forth. The leaflet included a reproduction of a typical Board ballot, marked "Yes" in favour of unionization. The union also acknowledged that the company's continued business success was in the interests of all parties.

38. The same day, in the morning, Mr. McBride received a copy of a document from an employee who claimed it had been distributed by a group of co-workers standing on the plant driveway. It was entitled "Just Say No". Mr. Ouellette testified that he saw it posted in the plant near the punch clock and in a bathroom. Later in the afternoon, a bargaining unit employee in a Lead Hand position with about ten years service, Mark Symonowski, distributed his own literature to employees. He was outside, in plain view of Mr. McBride. There is some dispute as to whether or not he was standing on the company's property. In any event, his communication, entitled "Just a thought", encouraged his fellow employees to give serious thought before casting ballots in the representation vote. In it, Mr. Symonowski states his case that the union does not understand the employees, and that the company has several positive attributes, including the Employee Committee, and has survived tough economic circumstances. Mr. Symonowski does not urge employees to vote against or for the union, but it is fairly clear that he believes they would be better served by rejecting the union.

39. Mr. Symonowski's uncontradicted testimony was that he alone composed the "Just a thought" document on a company computer. His wife and one other bargaining unit employee, Sean Allishaw, the chair of the Employee Committee, were the only people who saw the document before its distribution. There was no evidence to suggest that any member of management knew about it or put Mr. Symonowski up to it.

40. On May 14, 2008, Mr. Caines issued his third all-employee memorandum. We have reproduced the full text at Appendix III to the decision. This communication was distributed to employees at the plant. Again, Ms. Morant prepared the original draft. The document clearly articulates the company's view that employees should vote against the union. It reiterates some of the themes found in the previous company communications, for example that the employees would have to pay dues, that the union could not guarantee wage increase or other changes, and so forth. Mr. Caines again emphasized that the company's customers determine success, and that if the customers were dissatisfied with the company's quality, service and price, they had the option of looking to other businesses to meet their expectations. He gave two examples where two of the company's customers did precisely that. He stated:

> As you know it is our ability to work together to meet our customers' expectations for quality, service and price that ensure job security. We cannot compromise our ability to meet customers' needs. Customers **CHOOSE** to do business with us and if we let them down, they can elect to change suppliers. Chapman's Ice Cream was a large account that Boehmer lost due to quality issues. Recently, we lost the Novelis account due to quality issues. We can't lose customers because we fail to deliver the quality and service they need. There is no job security in a business model that doesn't ensure quality, service and price meet customer expectations.
>
> **WILL YOU AND YOUR FAMILY BE BETTER OFF WITH THE CEP UNION?**

> **WE DO NOT BELIEVE THAT YOU WILL BE.** All you have to do is take a look at newspaper articles concerning unions and our industry to know.
>
> (emphasis in original)

41. At the vote the following day, the union was only able to secure 54 ballots in its favour out of 166 ballots cast and counted. According to Mr. McBride, there is almost inevitably some "slippage" in support during an organizing campaign, about ten per cent. However, Mr. McBride characterized the loss of support in this case as "unprecedented" in his experience.

42. As we have indicated earlier, the second unfair labour practice complaint dealt with events that occurred long after the representation vote. On September 14, 2008, Mr. Ouellette received a witness summons to testify in these proceedings. On September 15, 2008, after consulting with his supervisor and with Mr. Murray, both of whom directed him to Janet Magee in Human Resources, Mr. Ouellette proceeded to her office with the summons in hand. Mr. Ouellette showed Ms. Magee the summons, and she made a copy of it. Ms. Magee did not seriously dispute Mr. Ouellette's testimony that when she returned the original document to him she said that the legal costs of the litigation would be taken out of the employees' bonus plan which had been introduced by Mr. Caines in August 2008. Later that day Ms. Magee happened by his work area and, according to Mr. Ouellette, said she hoped that he had not misconstrued her earlier statement to him. Ms. Magee testified that she did not recall making such a statement to Mr. Ouellette. She said she came by to explain to Mr. Ouellette the bonus plan, because he had not appeared to understand how it worked when he had spoken to her earlier that day.

43. Mr. Ouellette also gave evidence that Bruce Strecheniuk, the Director of Quality, started to pay much closer attention to Mr. Ouellette's work performance once the organizing campaign began in the latter part of April 2008. Whereas Mr. Ouellette had noticed Mr. Strecheniuk only very rarely in the workplace, after the organizing drive commenced Mr. Strecheniuk twice emerged in Mr. Ouellette's work area and checked on what he was doing, ensuring proper compliance with paperwork and labelling processes. After the vote, Mr. Ouellette noticed Mr. Strecheniuk in his area two or three times weekly, and this went on for some time until Mr. Ouellette mentioned it to Mr. McBride, who he believes said something to someone in the company. In cross-examination, however, Mr. Ouellette admitted that in the spring of 2008, in response to customer complaints about receiving "mixed product", the company introduced a new audit control mechanism for which Mr. Strecheniuk was responsible. That initiative involved the hiring of a quality control inspector under Mr. Strecheniuk's supervision. Mr. Strecheniuk trained the new inspector on the floor during a two-week period when Mr. Ouellette was working. Mr. Ouellette, in fact, participated in meetings about the issue, and according to Mr. Caines, Mr. Ouellette worked closely on the mixed product problem. In any event, Mr. Ouellette did not seriously challenge counsel for the company's assertion that Mr. Strecheniuk's increased presence in his workplace had to do with the new quality control initiative.

Analysis and Conclusions

44. The first question to be determined is whether or not the employer committed a breach or breaches of the Act. If not, the application for certification and the unfair labour practice complaints must be dismissed. If, however, we find there was at least one breach of the Act, then the second

question concerns whether the applicant is entitled to relief under section 11 of the Act, and in particular, whether the union is entitled to certification despite having lost the representation vote. To grant that relief the Board must be persuaded there is no other available remedy to counter the effects of the violation of the Act.

45. The union alleges that the company violated sections 70, 72 and 76 of the Act. Those provisions read:

> **70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.
>
> **72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,
>
> (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
>
> (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
>
> (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.
>
> **76.** No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

46. Four aspects of the union's case – the reversal of the shift start change, the Magee/Ouellette confrontation, the increased presence of Mr. Strechniuk in Mr. Ouellette's work area, and the taking of photographs by Mr. Muhlman – are more easily dealt with than the fifth, the issue of the anti-union communications. With respect to the reversal of the weekly shift start day, it is our view that the company did not commit an unfair labour practice. We are satisfied, based upon the uncontradicted testimony of Mr. Caines and Mr. Young, that the decision to revert to the Sunday

night start-up was taken before the commencement, and without any foreknowledge, of the union's campaign on April 22, 2008. We are also satisfied with Mr. Young's explanation as to the delay in posting the announcement of the reversal until several hours after the campaign began that morning. Accordingly, we find that the company's reversal was not a response to the organizing drive, and was not a violation of the Act.

47. We are also satisfied that the employer offered a plausible and uncontradicted explanation regarding the taking of photographs by Mr. Muhlman, which we accept. In any event, the union did not provide much detail concerning the circumstances in which the photographs were taken that would lead to the conclusion that any employees were aware of, or likely intimidated by, Mr. Muhlman's activities. We find no breach of the Act here.

48. Similarly, the company provided a plausible and uncontradicted explanation for Mr. Strechniuk's increased presence in Mr. Ouellette's work area, which we also accept. Again, we see no violation of the Act by the company arising from those circumstances.

49. Was Ms. Magee's exchange with Mr. Ouellette a violation of the Act? There was no dispute between them that, upon being presented with Mr. Ouellette's summons to appear in this proceeding, Ms. Magee commented that the legal costs associated therewith would be subtracted from the account funding the employees' bonus plan. Arguably, the message she meant to convey to Mr. Ouellette was that the employees would suffer the financial consequences resulting from the costs incurred by the company to defend the litigation initiated by the union. It probably was made in an unguarded moment of irritation, which Ms. Magee later regretted, thus accounting for her subsequent visit to Mr. Ouellette's work station. If her conduct was a breach of the Act, it was not a particularly egregious one. In any event, this incident cannot be said to have compromised the true wishes of the voters who participated in the vote months earlier.

50. The heart of the union's case against the employer, particularly as it pertains to remedial certification under section 11, concerns the three memoranda under Mr. Caines signature (the latter two of which featured contributions by Ms. Morant) and Mr. Foster's letter. We begin with an analysis of employer free speech in the context of the impugned campaign literature.

51. Section 70 prohibits among other things employer interference with the formation or selection of a trade union but it also confers upon employers the freedom to express views about unions and the effects of unionization upon the workplace so long as those views are not coercive, intimidating, threatening, promissory or unduly influential. As noted by the Board in *Capelas Homes Ltd.*, [1998] O.L.R.D. No. 3121 at paragraphs 16 and 17:

> 16. It is clear from the Board's jurisprudence that the employer's right to express its views is a substantial right. An employer is not required to stand mutely by when one or more trade union seeks to organize or be certified as the exclusive bargaining agent for its employees. Similarly, if the employer's right to express its views is to have real meaning, it cannot be that an employer is free to express its views so long as it says nothing negative about a union or organization. On the contrary, it is well established that an employer may say negative things and express its opposition to a union or organization.

> 17. On the other hand, no freedom is absolute, and there are limits to what an employer can say or do. These limits are found in section 70 itself. That is, an employer cannot use coercion, intimidation, threats, promises or undue influence under the guise expressing its views or exercising its freedom of speech, and thereby deny the more fundamental right upon which the entire Act is based; namely, the right of employees to freely choose for themselves whether they will or will not be represented by a trade union in their employment relations with their employer. In that respect, the Act attempts to balance the employer freedom of speech with the right of employees to choose without interference in a manner which is consistent with the norms of a democratic society, while recognizing the sensitivity of the employment relationship and the effects that an employer's words or actions can have on employees. The Act does not guarantee employees the freedom to choose without any pressures or influences. It would be unrealistic, indeed impossible, to attempt to insulate employees from the real world in an absolute way. Consequently, it is not "interference" in some general sense which is prohibited by section 70, but rather an interference through the use of coercion, intimidation, threats, promises or *undue* influence. The line between acceptable conduct and conduct which is contrary to the Act can be a very fine one, and employers (and unions) are wise to avoid trying to walk it.

The Board further noted at paragraph 25 that:

> An employer is therefore permitted to say: "I don't want a union." It is permitted to say: "Vote No." It is permitted to express a preference for continuing to deal with [sic] legitimate association or trade union it is already dealing with…

52. In his three memoranda to the company's workers, Mr. Caines certainly made no bones that the company preferred to engage with the staff through the Employee Committee and did not want to deal with a trade union, and he clearly expressed his hope that the employees would see it that way too. He made many negative comments about unionization, suggesting unions were in the habit of making empty promises, were less than democratic, and were motivated by financial gain. He also questioned the motives of the inside organizers, and implied they were not to be trusted. By the third memorandum, Mr. Caines openly and expressly urged the employees to cast their ballots against the union. All of these types comments have been viewed as fair game in the Board's jurisprudence.

53. Having said that, we do not lose sight of the anti-union nature of these documents in assessing the other messages within them. While employers may be free to cast aspersions against trade unions (and vice versa), they must be careful not also to suggest or speculate without a factual foundation, however subtly, that unionization will necessarily undermine the viability of the enterprise, and thus compromise employees' job security. That is threatening conduct which runs afoul of the freedom of employer speech and invites the Board's intervention. An illustration is provided in *Vogue Brassiere Incorporated*, [1983] OLRB Rep. Oct. 1737. In that case, in a speech to employees the respondent's Vice President alluded to the company having weathered a recessionary storm and emerging in better condition than its competitors, without the kind of layoffs and plant closures that the company's competitors had had to face. The majority of the Board concluded that this statement was a speculative prediction, made in the abstract, implying that collective bargaining would impair job security. The Board explained the basis for its close scrutiny of employer

predictions of future job loss. First, by virtue of its rather exclusive knowledge of the economics of its industry, an employer's statements about job loss will tend to carry great weight with employees. Second, such statements are aimed at the most crucial interest of the employees, that is, their interest in remaining employed. Third, linking job loss with unionization fails to take into account that a campaign for certification is merely the first step in the process of collective bargaining. The prospect of unionization may well introduce an element of uncertainty about the future of the workplace, but it is only when the trade union tables its bargaining proposals that any concrete debate about the effects of the employees' decision to unionize can truly begin to take shape. Accordingly, employers must be extremely cautious not to prematurely overstate the impact of unionization on job security.

54. The Board in the *Vogue* decision went on to find that the Vice President's statement alluding to layoffs and plant closures among the company's competitors, and the fact that it was made during the course of a captive audience meeting, compromised the voluntariness of the employee petitions challenging the union's documentary evidence of more than 55 per cent support. It therefore disregarded the petitions and certified the applicant based on the card-based system that existed at the time.

55. In *Viceroy Construction Company Limited*, [1977] OLRB Rep. September 562, the trade union lost a pre-hearing vote, but asked the Board to issue a certificate under section 7a (the equivalent of the current section 11) of the Act as it then was. The trade union pointed to two letters issued by the employer to the employees in the course of the organizing campaign. The first letter raised the prospect of a long strike and the concomitant unemployment of the employees, and perhaps the permanent loss of their right to return to work in the event a strike lasted longer than six months. In the second letter, the employer stated that the trade union could not guarantee job security, that job security could only be achieved by the employees working together to produce a quality product at competitive prices, and appended to the letter several newspaper articles describing the closure of unionized plants. The Board found that the letters went beyond employer free speech, and accordingly issued a certificate under section 7a.

56. A similar result was reached twenty years later in *JAK Electrical Contractors Limited*, [1997] OLRB Rep. July/August 578 in which a residential electrical contractor in the construction industry predicted that unionization of its employees would negatively affect its ability, vis-à-vis non-union contractors, to bid on construction work because of higher costs associated with collective bargaining. The employer in that case led evidence showing that when it had previously been unionized (the employees later decertified the bargaining agent), it lost work opportunities. It relied upon that evidence to argue that it had not merely speculated about the impact a trade union might have in the workplace. The Board disagreed. It stated at paragraph 148:

> 148. In my view, the employer's argument must fail. It was entirely appropriate for the employer to comment on issues such as wages, benefits and competitiveness during the course of this organizing campaign, as long as it did not comment in such a way as to promise, threaten, coerce, intimidate or unduly influence its employees. Because of the highly sensitive nature of the concept of competitiveness, and its connection to job security, great care must be taken in how an employer comments on that issue. As noted by the Board in paragraph 36 of *Vogue Brassiere Incorporated*, cited above, "an employer who raises the spectre of a loss of jobs incurs a significant risk of running afoul of the law". In order to ensure that it does

> not violate the Act, the employer must not make predictions regarding the impact of unionization in the abstract or that are speculative in nature. Any such prediction must be, as noted in the *Gissel Packing Co.* [(1969) 395 U.S. 575] case, carefully phrased, be made on the basis of objective fact, and reflect the employer's belief regarding the demonstrably probable consequences of unionization. In my view, this is where the employer erred in its communications with its employees.

57. In more recent decisions, the Board has continued to carefully scrutinize employer comments regarding competitiveness. In *West Elgin Construction Ltd.*, [2005] OLRB Rep. May/June 502 (June 1, 2005), for example, the Board found unlawful the concrete forming contractor's allusion to the closure of another unionized company and its documented claim that unionization might result in fewer jobs and the exposure of more junior employees to layoffs. At that time, the Board did not have the statutory option to order certification, but it did have the option to order a second representation vote in the event of a violation, and it did so. Similarly, in *Riverstone Masonry Inc.*, [2009] OLRB Rep. January/February 120 (January 26, 2009), a masonry contractor was found to have violated the Act when, in the course of a meeting with employees its principal said unionization meant that about 80 per cent of the contractor's customers would not be able to afford the resulting additional costs associated with collective bargaining, and there would likely be a loss of business. The Board then was under the current statutory regime, and having regard to the employer's statements, as well as its habit of closely questioning employees about the unions' campaigns, it certified the trade unions despite their defeat in the respective representation votes.

58. In fairness, we note that the *Viceroy Construction*, *JAK Electrical*, *West Elgin Construction* and *Riverstone Masonry* cases all arose in the construction industry, and as the Board noted at paragraph 26 in the latter decision, in the construction industry, " employment is simply more precarious." (On the other hand, it is difficult to argue that employment in the manufacturing industry in Ontario currently is appreciably less precarious.) Indeed, counsel for the employer referred to two decisions decided under the industrial provisions of the Act in which the Board found employer communications to be valid. Those bear further analysis below.

59. In *Kraft Canada Inc.*, [1997] OLRB Rep. March/April 239, the employer issued four letters to employees during an organizing campaign. According to the Board, all of them referred to business competitiveness, but only the fourth and last letter, which was reproduced in the decision, was attacked by the union. The basis for the trade union's complaint was two-fold. One, the union claimed that the employer misrepresented the effect of section 86 of the Act, commonly known as the "freeze" provision restricting the ability of an employer to change conditions of employment following notice to bargain. The second objection concerned the following statement by the employer:

> We urge you to remember what we have achieved so far at Scarborough. Over the last five years our plant has continued to thrive and maintain a leading position versus internal and external competitors. Because we are competitive, that has led to growth and plantwide investment. We need to STAY competitive.
>
> (emphasis in original)

The trade union argued that the message conveyed by the employer in the above statement was that competitiveness was equated with having no union, and that investment in the plant would be compromised by the introduction of a trade union in the workplace. The Board disagreed with both of the trade union's arguments, and with respect to the impugned statement, the Board found that the employer's statement was within the acceptable parameters of employer free speech. We note, however, that the letter complained of by the trade union in the *Kraft Canada* case did not, unlike the facts in the matters before us, contain any hint of plant closures by unionized competitors and made no express reference to job security.

60. The other industrial case cited by the company in the matter before us is *Pattison Sign Group*, [2005] OLRB Rep. May/June 468 (May 19, 2005). In that matter, the employer's plant manager, Al Thomson, issued five letters to the employees in the course of an organizing campaign. The majority of the Board described the letters in general terms at paragraph 8 of its decision, as follows:

> 8. ... In all of his communications, Thomson stresses that the applicant can only be certified following a secret ballot conducted by the Board, and he expresses the responding party's preference to continue to operate without a union. He encourages all employees to cast a ballot in the representation vote, and he encourages them to "vote no". One of the communications employs a question and answer format and addresses such issues as who is entitled to vote, the obligation to pay union dues, how and when to decertify, and individual employees' rights in the event of a strike. This communication also includes a sample ballot, in which an "X" has been placed in the "no" box. None of these written communications from the responding party contain any threats respecting the continued viability of the company's operations or the security of employment of any of its employees.
> ...

The trade union's complaint involved not only the employer's written communications, but also other events that need not be detailed here. The majority of the Board found no violations of the Act in regard to any of the allegations. In respect to the letters, the majority noted that they contained no threat to the workers' employment or other economic interests, nor had they been accompanied by any offensive verbal commentary.

61. What distinguishes the *Kraft Canada* and *Pattison Sign* cases from the matter before us is that in the instant case there were several references by Mr. Caines in all three of his letters to job security in the context of competitiveness and several express references in the second letter to closures of the unionized plants of competitors. Over and over again in these memoranda, Mr. Caines points out that competitiveness and job security go hand in hand. The second letter, issued after the company was aware of the application for certification, raises for the first time the fact of plant closures of unionized businesses. In the third letter, issued on the eve of the vote, there is a barely veiled reference to plant closures in the section which reads:

> **WILL YOU AND YOUR FAMILY BE BETTER OFF WITH THE CEP UNION?**
>
> **WE DO NOT BELIEVE THAT YOU WILL BE.** All you have to do is take a look at newspaper articles concerning unions and our industry to know.

Counsel for the company argued that the messages contained in the Caines memoranda were as follows:

- You have the right to choose.
- Whatever you do, vote.
- Has the union told you everything, and are the union's promises believable?
- You have got a good employee committee.
- The company's prospects are good and they can continue if we pay attention to customer service.

62. We agree that Mr. Caines repeatedly conveyed these thoughts. However, it is not accurate to suggest that they formed the entirety of the message he delivered to the employees. The fact of the matter is that there were references in the second and third memoranda, some more subtle than others, to unionized plant closures, and among the plants named happened to be unionized enterprises where the CEP had held bargaining rights. There must be a reason to have included this information, but not to refer to the closures of non-union plants of which Mr. Caines and Ms. Morant were aware. Certainly, the union's literature did not warrant a response by the company discussing plant closures. We are left, then, to conclude that the purpose for this information was to insinuate that the company's prospects for a better future might be impaired by the introduction of a union into an otherwise functional workplace. We have little doubt that the company's employees would be keenly alive to such a warning. We are convinced on the basis of the written words chosen by Mr. Caines and Ms. Morant in this regard, viewed in the context of a series of communications which clearly and increasingly express the company's antipathy to unionization, that the company raised the spectre of unemployment and job loss by connecting unionization with a diminution of the company's competitive position, and in so doing, went beyond what the Act permits. They may well have held a genuine belief in the inevitability of their predictions. Mr. Caines struck us as sincere in his view that the collective bargaining process creates hurdles to organizational success. Nevertheless, we are of the opinion that a reasonable employee would conclude from the memoranda, taken as a whole, that a vote for the union might jeopardize his or future employment.

63. We turn now to the Sean Foster letter. If, as the union postulated, Mr. Foster's supervisor, Joe Piotto, distributed the letter widely throughout the plant, or approved its distribution, or knew of the letter and did nothing to prevent its distribution or pursue its confiscation, that too would constitute a violation of the Act by the company even though it appears it had nothing to do with the letter's creation. The circumstances are suspicious. Why was the letter unsigned, if, as he claimed, Mr. Foster's purpose was to give employees the wisdom of his views as their peer? How would they know the letter was even authored by a peer? Secondly, there is no coherent explanation for how the letter came to be distributed. Mr. Foster denied that he placed copies everywhere in the plant, and yet

they made their way to all the common areas. He speculated that the Lead Hand might have been responsible, but that seems to us unlikely given that that individual had the foresight to seek out Mr. Piotto's approval to distribute Mr. Foster's letter, and then reported to Mr. Foster that Mr. Piotto forbade it. There was no direct evidence that any manager knew that copies were lying about and did nothing about the situation, but it seems odd that management was oblivious to the letter's existence given the length of time it remained available for all to see, and the breadth of its distribution throughout the plant. Mr. Foster's version of events raises unanswered questions. Moreover, we found it troubling that the details in his testimony concerning his interaction with the Lead Hand did not emerge in his examination in chief, but only after he was more closely scrutinized in cross-examination. In our view, the company did not adequately explain the circumstances surrounding the distribution of Mr. Foster's letter. We therefore draw an adverse inference that, to some degree, the company encouraged or facilitated its dissemination.

64. Following the discovery of Mr. Foster's letter, counsel for the union urged Mr. Caines to disavow its contents. Mr. Caines did not do so. Rather, he and Ms. Morant compounded the problem. Knowing that there had been an unsigned letter widely circulated throughout the plant predicting the demise of the company if it became unionized, and that the union considered it unlawfully inflammatory, they made similar references to other failed unionized businesses in the second memorandum. Rather than distancing themselves from Mr. Foster's warnings of disaster, Mr. Caines and Ms. Morant played a variation on the same theme. In essence, they adopted Mr. Foster's letter. That, in our view, must have compounded any employee anxiety that Mr. Foster's may have aroused, and probably did arouse.

65. For all these reasons, we find that the company violated sections 70, 72(c) and 76 of the Act.

66. We must now consider the application of section 11. It reads:

> **11.** (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,
>
> (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
>
> (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.
>
> (2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,
>
> (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
>
> (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or

> (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.
>
> (3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).
>
> (4) On an application made under this section, the Board may consider,
>
> (a) the results of a previous representation vote; and
>
> (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

67. Insofar as the application of section 11 is concerned and the union's request for remedial certification, the applicant relies chiefly upon the three Caines' memoranda and the Foster letter for the proposition that those communications irrevocably compromised the true wishes of the voters. That, in the union's submission, forecloses any other remedy but certification of the applicant.

68. Counsel for the union provided the Board with a brief history of section 11 from its inception in the Act (as it then was) as section 7(a) in 1975. He pointed out that, despite legislative developments since then, the test to be applied in determining whether the vote is a true expression of employee wishes is still relevant today in applying the current section 11. The test was and remains an objective one. The Board determines on the evidence adduced whether or not, on an objective assessment and without regard to the subjective views of the employees themselves, the true wishes of the voters have likely been ascertained: *JAK Electrical Contractors Limited, supra.* Counsel for the company did not take issue with these principles.

69. As pointed out in a number of the authorities cited in this decision, the Board has granted remedial certification under two broad categories: one, in circumstances where an employer has linked risks to job security with unionization; or second, where the cumulative effect of a range of unlawful employer acts, none of which in isolation would warrant automatic certification, would be to undermine the employees presumed confidence in the rule of law. This case falls into the first category. We have found violations of the Act in respect of the written communications and the links made in those communications between unionization and job security.

70. Generally, employees know they are vulnerable to the authority of their employer. If there was any doubt on that score in this case, Mr. Caines made it abundantly clear in his first memorandum when he asked employees why they would consider giving authority "to people you don't know and who don't rely on Boehmer Box for their livelihood?" Mr. Caines' unlawful comments alluding to the risks of unionization must be viewed through the lens of this reality. We have no hesitation, therefore, in concluding that the company's linkage of unionization with plant closures and job loss compromised the true wishes of the employees as expressed in the representation vote. Accordingly, the union has satisfied subsection 11(1) of the Act. We find that the true wishes of the employees were not reflected in the representation vote. The question remaining is how to remedy the company's violation.

71. Section 96(4) of the Act confers upon the Board an extensive range of remedial responses to the unlawful conduct of persons, employers and trade unions. Section 11(2)(c) mandates that the Board consider and reject all the remedial options available to it before it exercise its discretion to certify a trade union despite the results of the representation vote. But as the Board pointed out in the following passage from paragraph 159 of the *JAK Electrical* case cited previously:

> 159. ..., even the broad remedial powers exercised by the Board have practical limitations. In certain circumstances, it is not possible to magically return the genie back into the bottle, particularly where the employer has broadly communicated a threat of job loss as a consequence of unionization. In those circumstances, one could fairly question the ability of the Board to eliminate the effect of such threats from the minds of the employees. It simply may not be possible to fashion a remedy that will neutralize the memories of the employees affected by threats of job losses. Accordingly, only when the Board is satisfied, on balance, that a remedy or series of remedies can be devised which will fully and completely counter the effect of the contraventions of the Act, will those remedies be imposed when the circumstances would otherwise lead the Board to certify automatically. It must be remembered at this juncture that it is important that remedies ordered by the Board be effective. If the remedy ordered by the Board is insufficiently curative, the effect is to erode the integrity of the Act (see the comments of former Chair George Adams in "Labour Law Remedies", in Swan and Swinton, *Studies in Labour Law* (Butterworths), at p. 59), and to eliminate the substantive purpose of section 11 of the Act.

72. In this case, counsel for the company argued that a second vote would counter the effects of Mr. Caines' remarks if the Board found them unlawful. Remedial certification would not, in his submission, be appropriate in this case for a number of reasons. First, Mr. Caines' communications were not as egregious as the circumstances in the decisions cited by counsel for the union in which remedial certification was granted. There were no captive audience meetings, and no evidence of any management hectoring of the employees. Second, there has been a lengthy history of failed union organizing drives in this workplace, and it would offend good sense to certify the union in circumstances where the employees have repeatedly voted against unionization. Third, given that well over 18 months will have elapsed from the first representation vote and a possible second vote, there is no reasonable prospect that the voters will continue to have in their minds any anxiety over Mr. Caines' comments when they enter the polling station to cast a ballot.

73. Our task is to determine if there are remedies other than certification available to counter the effects of the company's communications that we have found constituted a violation of the Act. Assessing the relative egregiousness of the offence in this case compared to the circumstances in other Board decisions does not provide a particularly helpful means to deal with that issue. It is true that Mr. Caines' memoranda were not accompanied by other related misconduct on the part of the company prior to the vote. On the other hand, the company's literature went to each and every employee in the organization. We have to assume that, given the source of those documents and the subject matter, they were widely read by most if not all the workers. Furthermore, we have found that in all probability the company had some role in facilitating the circulation of Mr. Foster's letter.

74. The company's history with failed union drives is a factor to take into account in the exercise of our remedial discretion under section 11. As far as we know, the employees' true wishes

were reflected in those votes. At those junctures, the employees ultimately did not wish for representation by a trade union. Of course, what differentiates this organizing campaign from the others is the employer's unlawful behaviour, which in our view, based upon an objective assessment, would likely have unduly influenced the voters to fear for their future. While we are mindful that employees of the company have thrice rejected unionization, in our view that factor does not outweigh the impact of the company's misconduct in this case and thereby tip the balance in favour of a second representation vote as urged by the company.

75. Finally, we reject counsel for company's assertion that, in fashioning the remedies, we ought to take into consideration the length of time that has passed since the representation vote. For one thing, such an approach might motivate a party to engage in tactics to draw out litigation before the Board. Secondly, there is no factual basis or jurisprudential principle to support the notion that in matters of labour relations time heals all wounds or that the memories of employees, once threatened, are short.

76. No other remedies short of remedial certification, other than a second vote, were submitted by the company for our consideration. We conclude that a second representation vote is not sufficient to counter the effects of the employer's misconduct. Nor, in our view, would the Board's other customary remedies (directing the employer to post notices, to provide copies of the decision to employees, to permit the union an opportunity to meet with the employees and determine the best timing for a vote), in combination with a second vote, adequately respond to the threats raised by the employer's written communications. Those communications linked the viability of the enterprise, a subject which an employer is uniquely qualified to comment upon, with unionization. Mr. Foster's anonymous letter warning of the possibility of the closure of the business circulated throughout the plant for two days. Surely in such circumstances employees might well conclude that, only with management's tacit approval could an anonymous communiqué travel throughout the facility with the ease it did. Mr. Caines' second communication fo ng Mr. Foster's unsigned letter did nothing to distance the company from Mr. Foster's war...gs, and in fact, implicitly endorsed them by referring to other unionized plant closures. That had the probable effect, in the minds of the employees, of associating the selection of a bargaining agent with job loss. The company's actions negated any real choice between unionization and a non-union workplace. Even in a second vote scenario, the employees will likely feel compelled to vote only one way, against the union, because as a direct result of what the employer has told them they fear that, otherwise, they may lose their livelihood. Nor will a mere decision of the Board or a Board notice telling the employees that their employer breached the Act likely restore the employees' free will, unfettered by fears of future plant closure. Certainly, the union is in no particular position to persuade the workers that the threats to job security were empty and without any foundation. So, it is not clear to us that providing the union with liberal access to the employees for the purposes of communicating with them prior to a second vote will likely undo the effects of the company's threats to job security.

77. For these reasons, we are satisfied that the union ought to be certified pursuant to section 11.

78. Counsel for the applicant advised us in final argument that the union was agreeable to the company's proposed bargaining unit. Consequently, a certificate will issue to the applicant in respect of the following bargaining unit which we find appropriate for collective bargaining:

all employees of Boehmer Box LP in the City of Kitchener, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff.

79. Copies of the posting attached to this decision as Appendix IV, together with a copy of this decision, are to be posted in a prominent place at the employer's plant and warehouse and to remain posted for a period of 30 calendar days from the date of this decision.

DECISION OF BOARD MEMBER J. A. RUNDLE: March 3, 2010

80. I disagree with the majority's conclusion that the Employer has contravened the Act. The results of the vote denying the application trade union certification should stand. I do not think that the conditions under s. 11(1)(a) [this is, the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote] has been met. Further and alternatively assuming s. 11(1)(a) is met, I believe that an order under s. 11(2)(b) [another vote], along with the other directions is an appropriate exercise of the Board's discretion given the circumstances of this case which were neither egregious nor flagrant and do not call for remedial certification overriding the results of a vote by the majority of the workforce.

81. This application concerns a workforce that has been through two prior organizing drives by the applicant, union in 2003 and 2004. Most personnel are long-service employees of the Company. Many were through at least one of the earlier drives. This workforce has a hard-working labour-management Committee operating for years and with some of its employees members well-known Union supporters. This is also a workforce extremely well-versed in the ways of an organizing campaign. All of the employees knew there was going to be a secret ballot vote and many would have had the experience of voting in the prior votes. The employee understood that signing a membership card did not mean they were committed to vote for the Union. They could have expected, based on the past, that results of their vote would determine union representation. With this history it should be taken as a given that the employees understood the privacy of a secret ballot vote.

82. Most important this was an open campaign i.e. the workforce had a good knowledge of who supported the Union and who did not. The employees, both supporters and non-supporters, were actively engaged in the campaign. There is no evidence that individuals were disciplined for expressing their views.

83. The timing of the organizing campaign was deliberately chosen by the applicant to capitalize on the employee's displeasure with the employer's decision to change to a Sunday night start up [shift start change]. This shift start change was more likely than not to have been the major reason for the employee's decision to sign union cards. The reversion decision (return to the *status quo* re shift start time) by the employer made prior to the commencement or knowledge of the union's campaign was delivered to the employees coincident with the start of the organizing drive. The reversion decision was clearly significant to the employees. The evidence shows that the employer made this change after receiving many employee complaints. I have no doubt that the employer's decision to revert to the old schedule was a turning point in the minds of many employees. Accordingly, this action by the employer in all likelihood affected the wishes of the employees and caused support for the union to decrease.

84. It is my view that on a balance of probabilities the true wishes of the employees were likely reflected in the representation vote held on May 15, 2008. I base this on the following factors: first, the result is consistent with the union's loss in three previous representation votes, the last two with the applicant (s. 11(4) allows consideration of these votes). In 2004 support went from 47% membership to 38% in the vote; in 2003 support went from 52% membership to 40% in the vote; in 1997 support went from 44% membership to 17% in the vote. In my view past behaviour is often a likely indication of future behaviour; particularly, in this case where we have a stable group of employees and an important issue such as the shift change reversion. Given that the employees failed to support the union on three previous occasions it is impossible to say it is improbable that employees would again choose not to support the union a fourth time for entirely legitimate reasons. In 2003 and 2004 the Union was only able to garner an average of 39% of the ballots cast. On this basis alone (past employee conduct) I would say the true wishes of the employees were likely reflected in this representation vote that is no more than a pattern of behaviour.

85. Tellingly and consistent with the "natural" tendency for the Union support to trail off there was specific evidence from the Union that a drop in support often occurs between card signing and a vote. A signed membership card does not equate to a vote for the Union. Here, while the drop appears to have been more substantial than previously (66% membership to 33% in the vote) there still exists; in my opinion, the likelihood that the tendency for support to drop, along with the drop in support for the Union as a result of the reversion of the shift change, both of which were enough to cause the union to lose.

86. I disagree with the majority's determination that the job security issue originated with the employer. This is difficult to accept in light of Mr. Foster's letter, and other employee campaign literature that preceded the employer's first mention of job security. From Mr. Foster's letter:

> "The Union has already stated that they will not fight for wages or benefits, so what are they going to do?"

From the "Just Say No literature":

> "Job Security – be reliable, do your job efficiently, this shouldn't be a problem".
>
> "Better Wages" – Comparable companies under this union are generally lower".

In the "heat" of a union campaign how can it be an unfair labour practice for an employer to take up an issue it sees in an employee letter? There has been no finding, nor could there be a finding, that the content of Mr. Foster's letter and other employee campaign literature was induced by the Employer. Mr. Foster's evidence provided no proof of Employer participation in the composition of his letter. Why then can't an employer lawfully express a view on the campaign of the Union as described by Mr. Foster?

87. The content of Mr. Foster's letter and the legitimacy of the employer's reaction is a separate question from whether the employer acted quickly in response to the union's demand that the letter be removed from the workplace. The majority draws a general negative inference from "unanswered questions" on the part of Mr. Foster. What the "unanswered questions" are and what

importance they have is not stated by the majority. In a process that is fact and evidence driven I am unclear how one can conclude anything in the absence of drawing a specific inference from the evidence. It was not the Company's responsibility to explain the circumstances surrounding the formulation of Mr. Foster's letter. It was not the Company's letter. Neither can the Company be held responsible for the distribution of a letter they did not control or author. The union bears the onus at least to cross-examine Mr. Foster to give something the Board can draw inferences from – providing an explanation for these matters or provoking evidence to show the content of his letter did not reflect the union campaign. This onus, in my view, they clearly did not meet.

88. Quite apart from the majority's conclusion of there being an unfair labour practice committed by this employer, my greatest concern is the remedial response by the majority to these findings. This was a very active campaign in which the Union, employer and most importantly the employees, were fully engaged. The employee letters thoughtfully expressed their views and displayed a knowledge of their rights not often found in the average workplace. I would attribute this awareness to their involvement in the previous union organizing campaigns. The workforce displays an understanding of both the Union's organizing strategy as well as an appreciation of the Company's role in the campaign. This workforce was not naïve about the decisions they had to make. The majority's approach to the events of this organizing campaign is paternal and out of step with the realities of the situation. (Letters attached as Appendices V and VI.)

89. Even if the conditions under s. 11(1)(a) are met, the combination of the difficulty in this case in determining what the true wishes of the employees really were affected by, coupled with the employer's behaviour being a low-grade crossing of the presumed boundaries for expressions of its views makes remedial certification unwarranted. The behaviour is simply not, as the cases have shown, egregious. There have been no discharges; there have been no captive audience meetings; there have been no physical threats; there have been no lay-offs; there were no questions or interviews about who signed or did not sign membership cards; there was no increased activity by plant management on the shop floor.

90. On an egregiousness scale this unfair labour practice is not comparable to any of those cases that were the foundation of prior decisions automatically certifying a Union applicant. See *Mana Cleaners*, [1982] OLRB Rep. Dec. 1848; *East Elgin Concrete Forming*, [2007] OLRB Rep. July/August 741 (July 18, 2007); *Miller Group*, [1997] OLRD No. 1237 (this case involved the circulation of letters similar to those in the present case and the Board did not order remedial certification) *Palladium Catering Services Corp*, [1997] OLRD no. 3809; *Price Club Westminster*, [1994] OLRB Rep. Aug. 1029.

91. In a period of time when the Board did not have the power to automatically certify, it is instructive to look at *Baron Metal Industries Inc.*, [2001] OLRB Rep. May/June 553 (May 4, 2001). In this case of 90 employees in the bargaining unit, 6 employees did not vote, the vote result was 42 for the union and 42 against the union within the context of a severely poisoned work environment severely poisoned by terrible unfair labour practices. As a result of serious workplace intimidation and threats of the most egregious nature a second vote and various remedial orders were directed by the Board. The second vote results were "inconclusive" which translates that there was no overwhelming loss or negative change away from membership support. This supports my theory that the remedial orders of the Board can be effective in even the most egregious cases. The case before us is not in the category of *Baron Metals*. Certainly in the case before us we should ask the question

– why can we not contemplate the effectiveness of extensive remedial orders to clear the air for a genuine representation vote.

92. I dissent from the majority with respect to the remedy because the breach they found does not require the vote results to be set aside and certification granted. It is not egregious [or is even close to cases where certification was granted without a vote]. It cannot be determined whether the vote results represented a significant shift in employee's views because they had lost their belief in the ballot box protecting them. It makes more labour relations sense to order another vote. If the employees vote to support the union then it will be clear that the union has the support of a majority of employees and the likelihood of bargaining a collective agreement is enhanced. However, if the Board orders certification after the vote rejecting the union and the union does not have the support of the majority of employees, then the likelihood of bargaining a collective agreement is significantly diminished.

93. I would find no violation of the Act; however in the alternative, if the employer's conduct is an unfair labour practice, this is a circumstance where the Board should order another representation vote with the following conditions:

(a) forwarding to the union a list of employee name and addresses;
(b) the union be allowed to meet with the employees on company time at a time deemed appropriate by the union;
(c) a posting by the Board;
(d) a second vote to be held at a time of the union's choosing.

3215-09-HS United Brotherhood of Carpenters & Joiners of America, Local 1946, Applicant v. **EllisDon Corporation;** Dan Dignard, Inspector; and International Brotherhood of Electrical Workers, Local 120, Responding Parties

Health and Safety – Local 1946 sought a suspension of an order requiring electricians to mount bed locators in hospital rooms at the Victoria Hospital construction project – The Board found that it was more probable than not that the bed locator would be a metal frame fixture containing smaller electrical fixtures and raceways; it was not an electrical fixture within the meaning of the *Trades Qualification and Apprenticeship Act* – Given that, the Board found that Local 1946 demonstrated that it had a strong *prima facie* case for a successful appeal – Local 1946 also established that suspending the order was not likely to create a danger to the health and safety of workers and that it would be prejudiced if the order were not suspended – Since Local 1946 was able to satisfy all three criteria for a suspension of the order, the request was granted pending the disposition of the appeal

BEFORE: *Harry Freedman*, Vice-Chair.

DECISION OF THE BOARD: March 3, 2010

1. Dan Dignard, an inspector under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 as am. (the "Act") issued an order on January 21, 2010 requiring electricians to mount bed

locators in the hospital rooms at the Victoria Hospital construction project in London, Ontario (the "Order"). That work had been assigned to members of the applicant ("Local 1946"). As a result of the Order, members of Local 1946 ceased mounting bed locators at the Victoria Hospital construction site. That work has been carried out by members of the International Brotherhood of Electrical Workers, Local 120 ("Local 120") since the issuance of the Order.

2. Local 1946 filed a timely appeal with the Board under section 61(1) of the Act on February 1, 2010 against the Order (Board File No. 3216-09-HS) and at the same time made this application to the Board under section 61(7) of the Act for an order suspending the operation of the Order pending the disposition of the appeal.

3. Local 1946 is the trade union representing the carpenters who had been mounting the bed locators up to the date of the Order. Local 120 is the trade union representing the electricians who have been mounting the bed locators since Mr. Dignard issued the Order. EllisDon Corporation ("EllisDon") identified itself as the constructor responsible for the Victoria Hospital construction project.

4. Both Local 120 and the Ministry of Labour (the "MOL") on behalf of Mr. Dignard oppose this application while EllisDon agrees with Local 1946 and supports its request to have the Order suspended pending the disposition of the appeal. The parties filed detailed and comprehensive submissions together with supporting documents and authorities which have been of considerable assistance to me in dealing with this application.

5. The Order is based on section 3 of O. Reg. 572/99 as am. (Training Requirements for Certain Skill Sets and Trades) under the Act. The Order prohibits persons who are not electricians to carry out the work of mounting bed locators. The Order states in part:

> Upon consultation with the workplace parties and review of the Skill Set for Electricians it was determined that the work being done shall be done by Electricians.

Mr. Dignard explained his basis for issuing the Order at page 3 of the narrative portion of the Order when he wrote:

> Complaint about who is installing Bed Locators. Work is being done by Carpenters and Electricians feel that it is electrical work.
>
> The unit being installed is a Bed Locator which upon examination was discovered to be an electrical raceway for power and data wiring.
>
> The work being done by Carpenters is installing the electrical raceway or Bed Locator on the wall and pulling three flexible metal conduits through the back of the raceway.
>
> It has been determined that the work being done is not a Jurisdictional issue or dispute but rather the work is part of the skill set for 309A Electricians as set forth by Ministry of Training Colleges and Universities in document R.R.O. 1990, Regulation 1051 Electrician.

> This document states:
>
> "electrician" means a person who,
>
> (a) lays out, assembles, installs, repairs, maintains, connects or tests electrical fixtures, apparatus, control equipment and wiring for systems of alarm, communication, light, heat or power in buildings or other structures.

It is apparent from the Order Mr. Dignard's focus at the time he issued the Order was a complaint over who was installing the bed locators. It is also significant in my view that Mr. Dignard's assessment of the equipment being installed related to whether the work being done was work within the skill set of electrician within the meaning of the *Trades Qualification and Apprenticeship Act*, R.S.O. 1990 c. T.17 as am. (the "TQAA"). There is nothing in the narrative to suggest Mr. Dignard was concerned the installation of the bed locators by carpenters created a safety hazard or posed any risk to their health and safety or to the health and safety of any other worker at the Victoria Hospital construction site. Rather, he determined because the bed locator is "an electrical raceway" and the installation of that "electrical raceway or Bed Locator on the wall" required "pulling three flexible metal conduits through the back of the raceway bed locator" the installation work had to be done by a person authorized under the TQAA to carry out that work.

6. Section 3 of O. Reg. 572/99 provides:

> (1) A worker shall not carry out work in a scheduled trade unless he or she is authorized to carry out work in that trade under the *Trades Qualification and Apprenticeship Act*.
>
> (2) Every employer who employs a worker in a scheduled trade shall ensure that the worker is authorized to carry out work in that trade under the *Trades Qualification and Apprenticeship Act*.
>
> (3) For the purposes of this section, a worker is carrying out work in a trade if that work is part of the trade as set out in the regulation made under the *Trades Qualification and Apprenticeship Act* and referred to in Schedule 2.

The term "scheduled trade" is defined by section 1 of O. Reg. 572/99 to mean "a certified trade within the meaning of the *Trades Qualification and Apprenticeship Act* that is listed in Schedule 2." Items 1 and 2 of schedule 2 of O. Reg. 572/99 are "Electrician, branch 1: construction and maintenance electrician" and "Electrician, branch 2: domestic and rural electrician" respectively.

7. The trade of "electrician" is a certified trade under the TQAA by reason of Reg. 1051, R.R.O 1990 under the TQAA. Section 2 of Reg. 1051 provides the electrician trade is composed of two branches. Branch 1 of the trade is "a construction and maintenance electrician as defined in clause (a) of section 1 of the definition of 'electrician' in section 1." Branch 2 of the trade is a domestic and rural electrician and is not relevant to the issue in this proceeding. Section 1 of Reg. 1051 defines the term "electrician" as follows:

> "electrician" means a person who,

> (a) lays out, assembles, installs, repairs, maintains, connects or tests electric fixtures, apparatus, control equipment and wiring for systems of alarms, communication, light, heat or power in buildings or other structures,
> (b) plans proposed installations from blueprints, sketches or specifications and installs panel boards, switch boxes, pull boxes and other related electrical devices
> (c) measures, cuts, threads, bends, assembles and installs conduits and other types of electrical conductor enclosures that connect panels, boxes, outlets and other related electrical devices,
> (d) installs brackets, hangers or equipment for supporting electrical equipment,
> (e) installs in or draws electrical conductors through conductor enclosures,
> (f) prepares conductors for splicing of electrical connections, secures conductor connections by soldering or other mechanical means and reinsulates and protects conductor connections or
> (g) tests electrical equipment for proper function,
>
> but does not include a person who is permanently employed in an industrial plant at a limited purpose occupation in the electrical trade.

After reading O. Reg. 572/99 together with Reg. 1051 it becomes apparent O. Reg. 572/99 requires a person performing the work described in clause (a) of the definition, that is laying out, assembling, installing, repairing, maintaining, connecting or testing electric fixtures, apparatus, control equipment and wiring for systems of alarms, communication, light, heat or power in buildings or other structures, be authorized by the TQAA to do that work.

8. For purposes of this application, I have assumed the members of Local 1946 are not authorized by the TQAA to perform the work described in section 1, clause (a) of Reg. 1051 while members of Local 120 are authorized to do that work.

9. Mr. Dignard's authority to issue the Order is found in section 57(1) of the Act. Section 57(1) provides:

> Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, constructor, licensee, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

If the work of mounting a bed locator to the wall of a hospital room is properly characterized as the installation of an electrical fixture or electrical apparatus, the members of Local 1946 engaged in that work were not authorized under the TQAA to do it. The Order issued by Mr. Dignard requires EllisDon to comply with O. Reg. 572/99 by having that work performed by members of Local 120 who are qualified by the TQAA to do the work of a branch 1 electrician.

10. The Board has the discretion under section 61(7) of the Act to suspend the operation of an order under appeal. Section 61(7) provides:

> On an appeal under subsection (1), the Board may suspend the operation of the order appealed from pending the disposition of the appeal.

Although section 61(7) confers a broad discretion on the Board, the Board has generally limited the exercise of that discretion to circumstances where an applicant establishes suspending the operation of the order is not likely to create a danger to the health and safety of the workers, where the applicant has demonstrated a strong *prima facie* case for a successful appeal of the order, and where the applicant will be prejudiced if the order is not suspended. See *Regional Municipality of Hamilton-Wentworth*, [1998] OLRB Rep. July/Aug. 709; *R. J. Dungey and Sons Ltd.*, [1999] OLRB Rep. Jan./Feb. 82; *Upper Grand District School Board*, [2000] OLRB Rep. Nov./Dec. 1253 (December 13, 2000); *Loblaw Companies East*, [2003] OLRB Rep. Sept./Oct. 856 (October 9, 2003); *Carmeuse Lime (Beachville) Limited*, [2004] OLRB Rep. March/April 257 (March 31, 2004).

11. When an applicant under section 61(7) seeks the suspension of the operation of an order under the Act pending the disposition of the appeal of that order, the applicant must persuade the Board it is appropriate in all the circumstances to exercise its discretion to do so.

12. The bed locator is a manufactured and assembled unit Local 120 and the MOL in their submissions characterize as being an electrical fixture or electrical apparatus, not unlike a fluorescent light fixture. Local 1946 and EllisDon submit the bed locator is a manufactured unit containing assembled and installed electrical outlets attached to the metal frame of the bed locator unit. They submitted the bed locator is akin to a headboard affixed to the wall of a hospital room. They say affixing the bed locator to the wall does not involve the installation of an electrical fixture or electrical equipment as the members of Local 1946 do not do any wiring or connecting of the electrical components of the bed locator to the wiring.

13. Local 1946 set out in some detail the work its members do in respect of mounting the bed locators on the wall. It appears to me from the parties' submissions there is no material difference among the parties about what is done to install the bed locators. Local 1946 described that work as follows at paragraphs 7 through 10 of schedule A of its application:

> 7. A bed locator is a pre-manufactured headboard that is affixed to the walls of the rooms. The bed locator includes a preassembled, pre-installed electrical outlet attached to the bed locator's metal frame. The frame is attached to the way by affixing eight (8) screws or plugs at the point where the bed will be located. The frame is then covered with a prefabricated fibreglass panel.
>
> 8. There are three sets of wires encased in flexible metal conduit at the location where each bed locator is affixed. The flexible metal conduits are attached to a prefabricated head wall. The conduit was preassembled and pre-installed on the head walls and the head walls were installed by members of the Carpenters without objection for the IBEW or the Ministry. Members of the Carpenters also installed the drywall and cut holes in the dry wall for the flexible metal conduit. Members of the IBEW did pull the flexible metal conduit from the head wall through the holes in the drywall. When the bed locator frame is affixed to the wall, the employee installing the frame will have to place the metal conduit through pre-fabricated holes in the frame.

> 9. The employee installing the frame does not connect the wiring in the flexible metal conduit to the preassembled, pre-installed outlet on bed locator/headboard's frame. That wiring connection is performed by a member of the IBEW. The fibreglass cover is then placed on the metal frame after the conduit is wired into the bed locator's preassembled, pre-installed electrical outlet.
>
> 10. At no time during the affixation of the bed locator is there any current passing through any of the wiring. During the inspection the Inspector was satisfied of this fact.

There is some dispute between the parties as to whether Mr. Dignard was satisfied that no electrical current was passing through any of the wiring as Local 1946 asserts at paragraph 10. The MOL in its response on behalf of Mr. Dignard asserts he was not satisfied that the wires being worked with were not live. It submitted:

> In fact, the possibility that they might be live while the work was being done remains his concern. The carpenters are not qualified to test the wires to make that determination; nor is there any evidence that they did so. In fact, a serious electrical hazard exists if the wires are in fact live, and they touch the sides of the raceway as they are fed through.

Local 120 makes a similar submission at paragraph 14 of Schedule A of its response when it states:

> ...any handling of the conduit and conductor wires without appropriate training could be deadly. The Carpenters have asserted that there is no current passing through any of the wiring. This is disputed. Whenever a worker handles electrical wires they must ensure that those wires are dead. Because electricity is invisible, prior to any other handling or work, a worker must test the wires to ensure that there is no current present. This basic safety measure must be undertaken in every case, even where a worker has conducted a lock out/tag out procedure, they must still test and ensure that the wires are safe to work with. The members of the Carpenters' union, who appear to deny the risk of working with electrical wires, components and fixtures, do not have the skills and training to perform this testing.

14. EllisDon and Local 1946 accept the work being done by members of Local 1946 before the Order was issued required them to pull the electrical conduit installed earlier by members of Local 120 through holes in the bed locator before mounting the frame of the bed locator on the wall. EllisDon in its response points out at tab 2 of its Book of Documents that the wires within the flexible conduits members of Local 1946 feed through back of the bed locator are not connected to a power panel and members of Local 120 have verified there is no power in those wires.

15. Amico Corporation ("Amico"), the manufacturer of the bed locator, describes its product as a "bed locator system". At page 2 of its general specification document (tab 1 of Local 120's response) Amico states:

> Each bed locator system shall hold up to four (4) electrical communication devices on each side of the unit. It shall contain electrical raceways to

> enclose electrical wiring for each type of power (critical, normal & low voltage/communication).

The bed locator is comprised of a metal frame with a back plate and four channels within that frame. Each end of a channel has an electrical outlet. There is wiring in each channel connected to the outlet. There are three holes in the back plate of the bed locator through which the electrical conduits that had been previously installed by members of Local 120 are pulled.

16. The installation instructions provided by Amico distinguish between mounting the bed locator on the wall and connecting the services to the bed locator. See paragraphs 4 and 5 of the Amico Installation Instructions (Tab 10 of the EllisDon Book of Documents).

17. The bed locator is a pre-fabricated unit that contains electrical outlets. The bed locator contains electrical raceways, but members of Local 1946 have no role whatsoever in placing or connecting the wiring in those electrical raceways to the electrical outlets at each end of the electrical raceways. The members of Local 120 connect the wires in the flexible electrical conduits that had been pulled through the holes in the back plate of the bed locator when it was mounted on the walls to the wiring in the electrical raceways in the bed locator after the bed locator is mounted on the wall.

18. Local 1946 in its submissions filed in reply on March 1, 2010 to the responses filed by Local 120 and the MOL states the only work performed by its members "is attaching the metal frame [of the bed locator] to the wall. This involved placing the three pre-existing wires [flexible electrical conduits] through the holes in the frame and then attaching the frame to the wall." Having reviewed all the material filed by the parties, it seems to me that submission captures the essence of the work the members of Local 1946 were doing prior to Mr. Dignard issuing the Order and what work they ceased doing after it was issued.

19. Mr. Dignard indicated in his narrative supporting the Order that the work being done was not a jurisdictional issue or dispute but rather that the work is part of the skill set of an electrician as set out in the TQAA. As Local 1946 points out in its submissions, and as confirmed in the narrative with the Order, there was a complaint made about who was installing the bed locators. According to Local 1946, John Gibson, the senior business representative for Local 120 contacted Tony D'Orazio, the senior representative for Local 1946 to find out if members of Local 1946 were installing the bed locators. During a subsequent conversation, Mr. Gibson advised Mr. D'Orazio he believed installing the bed locators was work that should be done by members of Local 120. He also told Mr. D'Orazio Local 120 was considering filing a jurisdictional dispute under section 99 of the *Labour Relations Act, 1995*, S. O. 1995, c. 1 as am. and asked him whether Local 1946 would intervene in that proceeding. Mr. D'Orazio made it clear to Mr. Gibson that Local 1946 would intervene and defend the assignment of the bed locator installation to its members. About a week later Mr. Dignard attended at the project and made the Order.

20. The principal consideration in determining whether to suspend the operation of an order pending the disposition of an appeal of that order is whether the suspension of the order would endanger worker safety. Both the MOL and Local 120 contend the Order must be maintained to ensure worker safety due to the risk associated with handling electrical wires when the workers who are doing that work are not properly trained to do so. In my view, if the wires being handled are not connected to a power source or, in other words, the wires are not live and there is no possibility they will be live when they are being handled by workers not trained to deal with live electrical wiring,

then an order prohibiting persons who are not electricians from pulling those wires may be suspended without risking the safety of workers.

21. In this case, the time when the flexible electrical conduits are pulled through the back plate of the bed locator is when the bed locators are affixed to the wall. EllisDon points out the loose wires in the conduits are checked by members of Local 120 to ensure there is no power in those wires prior the installation work beginning. It contends the loose wires are not connected to any power panel and have already been verified to be dead lines.

22. Local 120 submits there is a risk associated with handling any wires since unless one is trained to test the wires to determine whether they are live, a worker cannot be sure there is no electric power in those wires.

23. The difficulty with that submission is that if there was a real concern about the loose and exposed wires in the conduits being live, then there would be a far greater risk throughout the project since it is clear that during construction, wiring and conduits are installed and remain unconnected and exposed to be connected at a later stage of construction. I agree with and adopt the following submission made by Local 1946 in its March 1st reply:

> The IBEW and the Ministry suggest that the major concern here is that the Carpenter places the wires through the holes in the frame. They raise the spectre of these wires being live. The Ministry submits the Inspector was not satisfied those wires were not live. First, as EllisDon submits, procedure before and after the Order required the wires be checked by an electrician before the Carpenter attaches the metal frame/headboard to the wall. Second, the Inspector must not have had a concern about the wires being live. If there was a possibility the wires were live there is a much greater hazard present than just the Carpenters affixing the frame. Specifically there would be possibly live wires lying exposed throughout the worksite. The Carpenters assume that the Inspector would not have been unconcerned about such circumstances if they had in fact been even remotely possible or overlooked ensuring that potentially live wires were being untended throughout the jobsite. The absence of any Order to remedy such a situation is proof that such a situation did not and does not exist.

Those submissions and the clear and unequivocal assertion of EllisDon that the wires being pulled through the back plate of a bed locator are not connected to a power source and had been checked by an electrician to ensure they are not live prior to the installation of the bed locators persuade me that members of Local 1946 were not handling live electrical conduit and wires when they were installing the bed locators and there is no real possibility they would be pending the disposition of this appeal. For those reasons I am satisfied suspending the Order will not endanger the safety of workers.

24. The MOL asserts the bed locator is an electrical fixture or apparatus and therefore any work associated with its installation requires a qualified person to do that work.

25. It seems to me, contrary to the opinion of Mr. Dignard, that the Order does relate to a jurisdictional dispute between Local 120 and Local 1946. Mr. Dignard when he made the Order focussed on the work only an electrician can do as a result of a complaint about who was doing the work rather than a complaint relating to a safety hazard at the construction project. Moreover, Mr.

Dignard did not consider the general carpenter trade as defined by Reg. 1056, R.R.O. 1990 under the TQAA. Section 1 of Reg. 1056 defines a general carpenter to mean "a person who is experienced in all of the units as defined in Columns 1 and 2 of Schedules 1 and 2." Schedules 1 and 2 set out the In-School Training and Work Experience Training for the general carpenter trade. Item 5 of Schedule 2 deals with interior finishing. Column 2 of Schedule 2 at item 5 describes the various elements of interior finishing which include "Built-in fixtures". If the bed locator is an electrical fixture, it must be installed by an electrician. If, however, the bed locator is a built in fixture that is not an electrical fixture, then its installation is part of the trade of a general carpenter.

26. The MOL in its submissions agrees that if the type of work being done is also described in Reg. 1056 then the members of Local 1946 would be permitted to do such work. The MOL argues the installation of electrical raceways is not work encompassed by Reg. 1056. I agree with the MOL, but it is unclear that members of Local 1946 were installing electrical raceways. The electrical raceways had been manufactured and installed in the bed locators as part of their initial assembly by Amico. The members of Local 1946 were installing the unit or fixture containing the electrical raceways. They were not handling the actual raceways in the bed locator.

27. Although the bed locator contains electrical components and electrical raceways it appears to me more likely a bed locator would not be considered an electrical fixture. A large built in cabinet for a home entertainment centre with shelves might well contain electric lights and electrical outlets that would have to be wired and connected. Surely no one would suggest that merely because that built in cabinet had some electrical components it becomes an electric fixture that must be affixed to the wall and floor by an electrician. Installing a cabinet containing electrical components is in my view work within the trade of a general carpenter while the actual wiring and connecting of the electrical components with that cabinet are encompassed by the electrician trade.

28. In dealing with this application I need only assess the relative strength of the position taken by Local 1946 and EllisDon in respect of the characterization of the bed locator. In my view, it is more probable than not that the bed locator would be considered a metal framed fixture that contains smaller electrical fixtures and electrical raceways. Based on the material filed by the parties I am persuaded, although possible, it is unlikely a bed locator in its entirety would be considered an electrical fixture within the meaning of TQAA. Rather, the electrical outlets on each side of the bed locator which are connected by wiring passing through the electrical raceways should be considered electrical fixtures.

29. In my view, both Local 1946 and EllisDon have provided substantial grounds for asserting the Order is incorrect. I am satisfied given what I believe is the more likely characterization of the bed locator as a metal framed fixture containing smaller electrical fixtures that Local 1946 has demonstrated it has a good *prima facie* case for a successful appeal of the Order.

30. Both the MOL and Local 120 contend Local 1946 has failed to establish it would be prejudiced if the Order were not suspended. The MOL submits an applicant seeking the suspension of an order must demonstrate significant prejudice and that prejudice must outweigh concern that suspension of the order would endanger worker safety. The MOL relies on *Ontario (Ministry of Community Safety and Correctional Services)*, Board File No. 2314-06-HS, decision dated December 22, 2006, unreported, Q. L. cite [2006] OOHSAD No. 156 and *Home Depot of Canada Inc.*, Board

File No. 1648-05-HS, decision dated September 26, 2005, unreported, Q. L. cite [2005] OOHSAD No. 137.

31. In *Ontario (Ministry of Community Safety and Correctional Services)* the Board found at paragraph 31 there was "an insufficient basis upon which to clearly find that worker safety would not be jeopardized if this Order were suspended." Similarly, in *Home Depot of Canada Inc.*, the Board held the applicant had failed to establish worker safety would be assured if the Order were suspended. In this case, I am satisfied suspending the Order will not create a risk to the workers' safety at the construction project.

32. Local 120 in its submissions relies on *R.J. Dungey & Sons Ltd.*, [1999] OLRB Rep. Jan/Feb. 82 to assert "economic hardship or claims cannot be allowed to override concerns for worker safety pending the disposition of the appeal." I agree with that submission, but as noted earlier, suspending the Order in this proceeding does not raise concerns about worker safety.

33. Local 1946 submits it will suffer significant prejudice because its members will have lost significant work opportunities to members of Local 120 as a result of the Order. It points out its members had installed well over 400 bed locators before the Order was issued, all without complaint from Local 120. It contends Local 120 had, in effect, obtained what is really an interim order in a jurisdictional dispute by lodging the complaint under the Act and convincing the inspector to issue the Order. Local 1946 also points out Local 120 will not be prejudiced by suspension of the Order since it had no right to that work assignment after having allowed members of Local 1946 to do a substantial amount of that work without asserting any claim over that work. Finally, Local 1946 submits its members will have lost the opportunity to earn wages doing the work they were assigned to perform. If it is successful in the appeal, Local 1946 members will not be able to recover those losses.

34. Local 120 submits the prejudice claimed by Local 1946 is, at best, an institutional prejudice relating to its work jurisdiction and is not the sort of prejudice the Board considers relevant in determining whether to suspend the operation of an order made under the Act. Local 120 relies on the following passage in *PCL Constructors Canada Inc.*, [2009] OLRB Rep. May/June 442 at page 446:

> There is some operational prejudice to PCL in refusing to suspend the order, although that is not a significant factor in these circumstances. However, there is no prejudice to any other party. There may be some institutional prejudice to the Sheet Metal Workers as a trade union if the Order is suspended (just as there would be the same degree of prejudice to the Labourers if it were not suspended), but that is not a consideration in an application to suspend under this Act.

It seems to me Local 1946 has provided a concrete basis for asserting prejudice beyond "some institutional prejudice". The loss of work opportunities for the members of Local 1946 is significant particularly when that loss of earnings cannot be compensated if it is successful in its appeal of the Order.

35. I prefer the approach taken by the Board in *Skyjack Inc.*, [2007] OLRB Rep. Jan./Feb. 191 in which the Board wrote at page 196:

> ...this Order would appear to contemplate the applicant engaging in a not inconsiderable process involving a complete risk analysis of its entire workplace followed by the creation and implementation of a new programme for a facility at which over 600 persons are employed. Given this, it can be assumed that resources and costs would be required to comply and, although their exact amount may be unknown, they will not be nominal. What is also clear is that, whatever the costs are, the applicant will not be able to recoup them should its appeal be successful. Therefore, the applicant will suffer prejudice should the suspension not be granted.

The Board in that case also noted there would be little prejudice if the order were suspended.

36. While Local 120 may well be prejudiced if the Order is suspended as it is likely, given the position taken by EllisDon in this matter, its members will not continue installing the bed locators, that work had not been assigned to them initially. Since Local 120 had not claimed a right to do that work using the normal jurisdictional dispute process under section 99 of the *Labour Relations Act, 1995*, the prejudice claimed by Local 1946 if the Order is not suspended is far more significant than the prejudice to Local 120 that may result if the Order is suspended.

37. I have been persuaded by Local 1946 and by EllisDon that the Board ought to exercise its discretion under section 61(7) of the Act and suspend the Order pending the disposition of the appeal in Board File No. 3216-09-HS.

38. The Board pursuant to section 61(7) of the Act hereby suspends the operation of the order issued by Inspector Dan Dignard on January 21, 2010 in F.V. No. 5973556 pending the disposition of the appeal of that order in Board File No. 3216-09-HS.

1408-09-ES Grapple Marketing Inc. c.o.b. as Kwik Kopy Design and Print Centre, Applicant v. Bonnielee Harrison and Director of Employment Standards, Responding Parties

Employment Standards – The employer sought review of an order requiring it to pay vacation pay to the employee, against whom the employer had a court order for restitution following a conviction for theft – The Board found that the wages were withheld before the conviction and restitution order, and such withholding was in violation of the set-off provisions of the Act – The employer is not allowed to put itself in a better position than another debtor by withholding wages – There was no authorization for the set-off, and the court order only required that the employee make reasonable efforts to comply – Application dismissed

BEFORE: *Brian McLean*, Vice-Chair.

APPEARANCES: *Philip Gordin* and *Harold Grodinsky* for the applicant; no one appearing for *Bonnielee Harrison* and Director of Employment Standards.

DECISION OF THE BOARD: March 1, 2010

1. This is an application for review pursuant to section 116 of the *Employment Standards Act, 2000,* S.O. 2000, c.41, as amended (the "Act") by an employer of the decision by an Employment Standards Officer to issue an Order to Pay in favour of a claimant, the individual responding party. The Order to Pay was for unpaid vacation pay.

2. The hearing in this matter was scheduled for 9:30 a.m. on February 16, 2010 at the Board's offices in Toronto. At the time set for the hearing the responding party claimant was not in attendance. Accordingly, in accordance with the Board's practice, I stood down for one half hour. At 10 a.m., I commenced the hearing although the claimant was still absent, and proceeded to hear the application.

3. The Company does not deny that it withheld vacation pay owing to the claimant. However, it asserts it had good reason to withhold the vacation pay.

4. The Board heard evidence that the claimant was an employee of the applicant. Her employment was terminated in April 2007 for theft. The employer pressed criminal charges against the claimant. The claimant pled guilty to those charges and on November 24, 2008 the Court made the following Order, among others, as part of a Conditional Sentence [Ms. Harrison shall]:

> 3. make reasonable efforts to comply with any Order of Restitution for a total of $25,000.00

5. The claimant was then ordered by the Court to "make restitution in the amount of $25,000.00 to victim [name] to be paid through the desk of the Court by cash, certified cheque or money order.

6. The claimant has not made full restitution as ordered.

7. The applicant asserts it is not obligated to pay the claimant her vacation pay in light of the Court Order and the claimant's failure to make restitution.

8. The relevant provisions of the Act are s. 13(1) and (2) which state:

> **13.** (1) An employer shall not withhold wages payable to an employee, make a deduction from an employee's wages or cause the employee to return his or her wages to the employer unless authorized to do so under this section.
>
> (2) An employer may withhold or make a deduction from an employee's wages or cause the employee to return them if a statute of Ontario or Canada or a court order authorizes it.

9. The purpose behind s. 13 of the Act is clear: it is to prohibit an employer from using its power as the holder of the employee's wages to get its way with respect to monetary or other disputes between it and the employee. This ensures that except, in unusual circumstances, an employer is not in a better position than anyone else who might have a claim against its employee. This is an especially important point where the wages at issue are vacation pay which is subject to a statutory trust (see s. 40(1)).

10. The exceptions which permit an employer to hold back wages are narrow, but include where a Court had made an order "authoriz(ing) it". In my view, the words "a Court Order authorizes it" mean that the Court Order must specifically address the issue of the set off of wages owing to the employee by an employer, as in a garnishment or other specific Court Order. Moreover, the Court Order authorizing the deduction must be present at the time the employer makes the deduction.

11. The difficulty for the employer in this case is that at the time it withheld the money there was no Court Order as the statute requires. In addition, the Court Order that was made does not authorize a deduction subsequently from the employees' wages. The employer's actions were therefore, clearly contrary to the Act.

12. The thrust of the employer's main argument though is that the Board can now take account of the Court's Order. The Board stands in the shoes of the Employment Standards Officer. It is the Employment Standards Officer's job to determine if wages are owing, and because of the Restitution Order there are no wages owing.

13. I disagree with this argument. I agree that the Board's job, standing in the shoes of the Employment Standards officer, is to determine whether wages are owing. Quite simply, the only way that wages are not owing is if the employee's deductions was authorized by s. 13(2) which, as I have noted, it was not.

14. Furthermore, there is nothing in the Act which permits the Board or the Employment Standards Officer to "set off" a debt owed by an employee to an employer against wages owed by an employer to an employee. Such a set off can only be made by the employer at the appropriate time when it has a Court Order or when authorized by the employee.

15. As noted, there is nothing in the Restitution Order which specifically authorizes the Board to "set off" the amount the Board finds owing against other debt. In fact, the sentencing Order only asks the employee to make "reasonable" efforts to comply with the Restitution Order. In my view, that Order therefore contemplates that, subject to review by the Court on application by the employer, it is the employee who decides how to spend her money and how much of it she reasonably will spend on restitution. If the Board were to simply "set off" the full amount, such a result would violate the spirit of the Court's sentencing Order.

16. The employer relies on three decisions in support of its position. Two of the decisions, *1148824 Ontario Inc. o/a General Printing/General Press* (September 3, 2003) and *Nadon Lumber Ltd.* (July 6, 2005) were each decisions where the discussions about a restitution order were *obiter* of the main decision. I find them of no assistance in determining the matter before me. The final decision, *175382 Canada Inc. o/a Hillary's Cleaners* (December 12, 2008), is clearly on point. However, the statutory analysis in that decision is thin and with respect I must disagree with the conclusion reached for the reasons stated above.

17. The Board would understand if the employer is dismayed by this result. However, the Act is designed to protect employees against the very thing that occurred here: an employer who holds back money from wages that it believes it is owed money from the employee. Moreover, nothing in this decision prevents the employer from obtaining the money in other ways.

18. For all of the foregoing reasons, the application is dismissed.

2669-08-U; 2835-08-U; 3057-08-RV Essex and Kent Counties Skilled Trades Council, Applicant v. **Greater Essex County District School Board**, Responding Party; Greater Essex County District School Board, Applicant v. Essex and Kent Counties Skilled Trades Council, Responding Party

Construction Industry – Duty to Bargain in Good Faith – Employer – Unfair Labour Practice – In negotiating the renewal of the collective agreement, the employer tabled a proposal with respect to jurisdiction and contracting out provisions – These amendments pertained to only one of the members of the Skilled Trades Council, the IBEW, which claimed the employer's proposals were an attempt to bargain recognition provisions to impasse, in breach of the obligation to bargain in good faith –The Board noted that to determine if changes are truly inconsistent with the Act, the context of the particular collective agreement and circumstances must be reviewed – The Board found the proposal to change the jurisdiction clause did not change the description of the bargaining unit and the change to the contracting out wording did not breach the Act, as it was the same language that the other members of the council have lived with, nor does it threaten the long-term integrity of the bargaining unit or IBEW's bargaining rights in light of the provincial collective agreement which covers electrical work in the ICI sector – The Board determined that the employer's proposed amendments did not breach their obligation to bargain in good faith

BEFORE: *Kevin Whitaker*, Chair.

APPEARANCES: *S. B. D. Wahl, S. Furer, B. Gagliano, W. Dunn, K. Elliot* and *M. Meloche* for Essex and Ken Counties Skilled Trades Council; *L. P. Kavanaugh, Suzanne M. Porter, Mike Kraus* and *Al Cook* for Greater Essex County District School Board.

DECISION OF THE BOARD: April 6, 2010

I

1. This matter consists of two unfair labour practice complaints (one from each of the two parties) and a request by the Greater Essex County District School Board (the "employer") for a final offer vote pursuant to section 42 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").

2. On January 26, 2009, and over the objection of the Essex and Kent Counties Skilled Trades Council (the "council"), the Board conducted a final offer vote. Fourteen ballots were cast in favour of accepting the offer. No ballots were cast to reject the employer's offer.

3. On October 26, 2009, the Board held a hearing to hear the parties' submissions as to whether the employer's proposals to amend Articles 3.01(b) and 24.02 of the collective agreement breached section 17 of the Act.

4. On October 30, 2009, the Board issued a "bottom line" decision finding that the employer's proposals in bargaining did not breach section 17 of the Act.

5. The Board indicated that its reasons would follow and the matter was remitted to the parties to attempt to settle the remaining issues.

6. The Board understands that the parties have been unsuccessful in this regard. The matter is being rescheduled to deal with the issues which remain outstanding.

7. What follows are the reasons for the Board's findings that the employer has not breached its obligations under section 17 of the Act.

II

8. The facts giving rise to the dispute arising under section 17 of the Act are brief and undisputed.

9. The employer is a public school board. The other party is a voluntary, uncertified council (the "council") comprised of six trade unions:

> Bricklayers & Allied Craftworkers International Union – Local No. 6
>
> International Brotherhood of Electrical Workers – Local No. 773
>
> International Union of Painters & Allied Trades – Local 1494
>
> Labourers International Union of North America – Local No. 625
>
> United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local No. 552
>
> United Brotherhood of Carpenters & Joiners of America – Local No. 494

10. The parties are bound by a collective agreement (the "collective agreement") with an expiry date of August 31, 2008. With the exception of the Carpenters, each of the individual members of the council and the employer, are bound by a provincial collective agreement (the "provincial collective agreement") which covers the ICI sector.

11. Article 1 of the current collective agreement is entitled "Definitions" and states:

> ARTICLE 1- DEFINITIONS
>
> 1.01 In this Agreement:
>
> (a) "Board" means the Greater Essex County District School Board, or its agents.

(b) "Unions" mean the Council of Skilled Trades Unions comprising of:

Bricklayers & Allied Craftworkers International Union – Local No. 6

International Brotherhood of Electrical Workers – Local No. 773

International Union of Painters & Allied Trades – Local 1494

Labourers International Union of North America – Local No. 625

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local No. 552

United Brotherhood of Carpenters & Joiners of America – Local No. 494

(c) "Employee" or "employees" means any person in the bargaining unit described in Article 2 – Recognition, except where the content otherwise provides.

12. Article 2 of the current collective agreement is entitled "Recognition" and states:

ARTICLE 2 – RECOGNITION

2.01 The Board recognizes the Unions listed in Article 1.01 (b) as the sole collective bargaining agent for all of its employees with respect to rates of pay, hours of work and working conditions who are employed as bricklayers, electrical workers, painters, labourers, plumbers and/or pipe fitters and carpenters in the Board's Facility services Division, save and except foremen and persons above the rank of foremen.

2.02 In the event that the Employer should merge, amalgamate or combine any of its operations or functions with another school board, the employer will use its best efforts to ensure retention of all seniority and benefits enjoyed by its employees with the successor employer.

13. Article 3 of the current collective agreement is entitled "Jurisdiction" and states:

ARTICLE 3 – JURISDICTION

3.01 (a) Members of the Bricklayers and Allied Craftworker's International Union Local No. 6 shall do all labour trade work on the current and new properties within the geographical jurisdiction of the pre-amalgamated Windsor Board of Education except that work which shall be designated as

preventive maintenance and performed by that department of the Board and except that work which may be contracted out pursuant to Article 24. Preventive maintenance shall be designated as that work which does not require the expertise of a tradesperson.

(b) Members of the International Brotherhood of Electrical Workers Local No. 773 shall do all electrical work, construction or non-construction electrical work on the current and new properties within the geographical jurisdiction of the pre-amalgamated Windsor Board of Education except that work which shall be designated as preventive maintenance and performed by that department of the Board and except that work which may be contracted out pursuant to Article 24. Preventive maintenance shall be designated as that work which does not require the expertise of a tradesperson.

(c) Members of the International Union of Painters and Allied Trades Local No. 1494 shall do all labour trade work on the current and new properties within the geographical jurisdiction of the pre-amalgamated Windsor Board of Education except that work which shall be designated as preventive maintenance and performed by that department of the Board and except that work which may be contracted out pursuant to Article 24. Preventive maintenance shall be designated as that work which does not require the expertise of a tradesperson.

(d) Members of the Labourers International Union of North America Local No. 625 shall do all labour work on the current and new properties within the geographical jurisdiction of the pre-amalgamated Windsor Board of Education except that work which shall be designated as preventive maintenance and performed by that department of the Board and except that work which may be contracted out pursuant to Article 24. Preventive maintenance shall be designated as that work which does not require the expertise of a tradesperson.

(e) Members of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local No. 552 shall do all plumbing and/or pipe fitting trade work on the current and new properties within the geographical jurisdiction of the pre-amalgamated Windsor Board of Education except that work which shall be designated as preventive maintenance and performed by that department of the Board and except that work which may be contracted out pursuant to Article 24. Preventive maintenance shall be designated as that work which does not require the expertise of a tradesperson.

(f) Members of the United Brotherhood of Carpenters and Joiners of America Local No. 494 shall do all carpentry trade work on

> the current and new properties within the geographical jurisdiction of the pre-amalgamated Windsor Board of Education except that work which shall be designated as preventive maintenance and performed by that department of the Board and except that work which may be contracted out pursuant to Article 24. Preventive maintenance shall be designated as that work which does not require the expertise of a tradesperson.

14. Article 24 of the current collective agreement is entitled "Contracting Out" and states:

> ARTICLE 24 – CONTRACTING OUT
>
> 24.01 No employee covered under the terms of this Agreement shall suffer demotion or layoff as a result of contracting out of work normally performed under the terms of this Agreement.
>
> 24.02 The Board and the I.B.E.W. agree that any electrical work, construction or work not exempted by 3.01 (b) that may be contracted, subcontracted, or tendered out by the Board shall be contracted, subcontracted or tendered only to Employers bound to the I.C.I. Collective Agreement between the I.B.E.W. (C.C.O.) and the E.T.B.A herein known as the Provincial Collective Agreement or to an Employer who agrees to contract, sub-contract or tender work only to employers bound to the I.C.I Collective Agreement referred to above.

15. The parties commenced bargaining for a renewal collective agreement on June 18, 2008. The parties met again in bargaining on September 2, 12, October 27, 28 and November 25, 2008.

16. On September 12, 2008, the employer tabled a proposal with respect to articles 3.01(b) and 24 as follows:

> ***Article 3.01(b):*** Members of the International Brotherhood of Electrical Workers Local No. 773 shall do all electrical work on the current and new properties within the geographical jurisdiction of the pre-amalgamated Windsor Board of Education except that work which shall be designated as preventive maintenance and performed by that department of the Board and except that work which may be contracted out pursuant to Article 24. Preventive maintenance shall be designated as that work which does not require the expertise of a tradesperson.
>
> ***Article 24.02***: will be deleted.

17. The employer's proposed amendments deal only with one of the members of the council – The International Brotherhood of Electrical Workers Local 773 (the "IBEW"). The employer's proposal is to deal with the IBEW as it does with the other five union members of the council - under the same terms for purposes of Articles 3 and 24.

18. On November 11, 2008, the IBEW advised the employer that the only remaining outstanding issues in bargaining were the employer's proposals to amend articles 3 and 24 as they

related to the IBEW only. Further, the IBEW on behalf of the council, notified the employer that the council took the position that the employer's outstanding proposals were an unlawful attempt to bargain recognition provisions to impasse.

19. The parties agree that bargaining has reached the point of impasse.

III

20. While there remains a series of issues in dispute between the parties, the only one addressed in this decision is the question of whether the employer's proposals to amend articles 3 and 24 amount to a breach of its obligations to bargain in good faith under section 17 of the Act:

> **17.** The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

21. The parties agree that proposals which are unlawful may not be bargained to impasse. The Board has interpreted this proposition to include proposals which are inconsistent with the scheme of the Act. This in turn has been understood to include any issues which go to recognition and/or the assertion of bargaining rights. Put simply, the Act provides expressly for the creation and exercise of union recognition and the assertion of bargaining rights - and it is inconsistent with the Act for any party to attempt to use economic power (through strike or lockout) to determine the scope of bargaining rights.

22. The employer asserts that its proposals to amend articles 3 and 24 do not deal with or address in any way recognition issues or bargaining rights, but rather deal with jurisdiction and contracting out and are in no way inconsistent with the scheme of the Act.

23. The mere fact that bargaining proposals deal on their face with work jurisdiction and/or contracting out does not mean that such proposals are consistent with the scheme of the Act. The Board has, in a number of cases, indicated that bargaining rights do not necessarily equate with work jurisdiction, unless the consequences to an alteration of jurisdiction interfere with or put at risk, the bargaining rights. The Board has also acknowledged that in some cases, contracting out provisions may jeopardize union recognition.

24. Conversely, proposals which purport to deal with contracting out or jurisdiction do not necessarily deal with recognition or the scope of bargaining rights. In *Bricklayers, Masons Independent Union of Canada, Local 1 v. The Metropolitan Toronto Apartment Builders Association, Toronto Building and Construction Trades Council*, [1978] OLRB Rep. Nov. 1022, the Board dealt with the issue of whether a proposed sub-contracting clause interfered with bargaining rights:

> 40. Nor can it be said that the sub-contracting clause interferes with another union's bargaining rights contrary to section 56 and 59 of the Act. In the Board's view, there is no exact equation between bargaining rights and work jurisdiction, as the complainant attempted to make out. While the Board recognizes that, without a supporting work jurisdiction, bargaining rights in the construction industry may wither, the two concepts are not congruent. Under the *Labour Relations Act*, bargaining rights acquired either

> through the certification process or by voluntary recognition only entitle a union to be recognized as the exclusive bargaining agent for a particular group of employees. The bargaining rights conferred by law do not give a union any particular work jurisdiction, and any claim to a work jurisdiction must be asserted and established in the bargaining process through such means as a sub-contracting provision. Sections 56 and 59 of the Act are intended to protect bargaining rights only, and these sections cannot be interpreted as providing protection to a work jurisdiction. Conflicting claims to particular work receive much different legislative treatment, being subject to the procedure established in section 81 of the Act for the resolution of jurisdictional disputes.

25. Whether a bargaining proposal is truly inconsistent with the Act then is a question of fact, to be determined in the context of the particular collective agreement and circumstances as between the parties.

26. In the present case, it is appropriate for the inquiry to begin with the recognition clause in article 2 of the collective agreement. Entitled "Recognition", this article reflects the parties' joint understanding of the member unions' "recognition". The language of the article makes it very clear that the bargaining unit contains all employees of the employer engaged in the described trades. As the employer's proposals do not purport to address this article, there is nothing being sought by the employer which would alter or amend the current description of the bargaining unit.

27. The narrower question then is whether the employer's proposed changes to the description of jurisdiction of the IBEW or the contracting out provisions of the collective agreement are inconsistent with the scheme of the Act.

28. The council argues that the removal of the phrase "construction or non-construction electrical work" in article 3 will weaken the IBEW's protection against contracting out, alter its jurisdiction and thereby put at risk the integrity of the bargaining unit.

29. It is apparent that some of the work done by employee custodians will be the repair of systems that have ceased to function and some of this may be construction work. The purpose of the phrase "construction or non construction work" in a collective agreement - that is clearly a non-construction collective agreement in every other way - makes sense only to protect the union if the employer were to assign the work to non-union employees on the grounds that it was construction work not covered by the collective agreement. This is a very unlikely scenario. If on the other hand the employer contracted or sub-contracted work to a union contractor - then the union would have no complaint.

30. The other five trades who are members of the council have successfully lived with the same language in article 3 now being proposed for dealing with the IBEW. There is nothing before the Board to suggest that the formula used for the description of jurisdiction in article 3 as it pertains to the other member trades somehow puts their bargaining rights at risk or will lead to consequences or outcomes which are inconsistent with the Act.

31. It must also be remembered that the IBEW and the employer are parties to the provincial agreement which covers electrical work done in the ICI sector. The current collective agreement

cannot in any way amend the provincial agreement, including the scope of recognition and the sub-contracting provisions of that agreement.

32. With respect to the proposed changes to Article 24, the employer is suggesting to remove 24.02 and to deal with the IBEW under the same provisions which govern contracting out for purposes of the other five members of the council. This is not unusual language and certainly does not threaten the long term integrity of the bargaining unit or the IBEW's representation rights – particularly in light of the provincial collective agreement. There is nothing about the proposal to remove article 24.02 which would appear to be inconsistent with the Act.

IV

33. The Board concludes that the employer's outstanding proposals are not likely to alter or impair the council's bargaining rights or its scope of recognition in the context of this particular collective agreement and the circumstances of the parties. These proposals are not inconsistent with the scheme of the Act.

34. For these reasons, the Board has found that the employer's proposed amendments - being pushed to impasse - do not breach the provisions of section 17 of the Act.

0106-10-R Employees of Kidd Mechanical Inc. represented by Vikki Schlonies, Applicant v. Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, on its own behalf and on behalf of all of its affiliated bargaining agents, Responding Party v. **Kidd Mechanical Inc.**, Intervenor

Bargaining Rights – Construction Industry – Practice and Procedure – Termination – Trade Union – The Board confirmed that applicants seeking to terminate bargaining rights in the ICI sector may deliver their applications to either the employee bargaining agency or the local union with whom they have a relationship – The Board decided that the trade union named as the respondent has the obligation to give notice of the termination application to the Employee Bargaining Agency and the affiliated bargaining agents – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

DECISION OF THE BOARD: April 19, 2010

1. The applicant has applied to the Board under section 63 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") for a declaration that the responding party no longer represents the employees in a bargaining unit for which it is the bargaining agent. The applicant seeks to terminate the bargaining rights of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada for employees of Kidd Mechanical Inc. An issue has arisen as to the appropriateness of the delivery of the application to the trade union.

2. The application was filed on April 9, 2010 and names as responding party the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada ("the UA International"). The application was delivered to the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 527 ("Local 527").

3. A response was filed by Local 527 on April 13, 2010. It asserted that the UA International was not the exclusive bargaining agent in respect of employees in the bargaining unit. It referred to four collective agreements to which it said that Kidd Mechanical Ltd. was bound: the Provincial Collective Agreement, a residential collective agreement, an electrical power systems sector collective agreement and a pipeline collective agreement. (Of these collective agreements, it appears that only the Provincial Collective Agreement is relevant because the site listed where the four employees were working on the application date appears to be an ICI project.)

4. By letter dated April 14, 2010, the applicant asked the Board to amend the style of cause to delete the UA International and to substitute for it the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the "OPTC") and Local 527. By letter the same day, counsel who filed the response wrote to the Board asking that the application be terminated for failing to name the proper responding parties.

5. Sections 63(2) and (3) provide:

> (2) Any of the employees in the bargaining unit defined in a collective agreement may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,
>
> (a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last three months of its operation;
>
> . . . . . .
>
> **Notice to employer, trade union**
> (3) The applicant shall deliver a copy of the application to the employer and the trade union by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board.

6. The question in this case is who is the "trade union" named in subsection 63(2)? In this decision I will deal only with the Provincial Collective Agreement. There is only one project identified and it appears to be in the industrial, commercial and institutional sector and, if so, the only collective agreement under which bargaining rights may be terminated. In that case, the parties to the Provincial Collective Agreement are the Mechanical Contractors Association of Ontario (the Employer Bargaining Agency) and the OPTC. In fact, the OPTC is only part of the Employee Bargaining Agency, along with the UA International. In any event, the definition of affiliated bargaining agency in subsection 151 includes an international union. In the case of this union, the affiliated bargaining agents also include Locals 46, 67, 71, 221, 463, 508, 552, 527, 593, 599, 628, 663, 800 and 819 (the "Local Unions").

7. Subsection 151 (2) and 156 provide

> **Deemed recognition of affiliated bargaining agents**
>
> (2) Where an employer is represented by a designated or accredited employer bargaining agency, the employer shall be deemed to have recognized all of the affiliated bargaining agents represented by a designated or certified employee bargaining agency that bargains with the employer bargaining agency as the bargaining agents for the purpose of collective bargaining in their respective geographic jurisdictions in respect of the employees of the employer employed in the industrial, commercial or institutional sector of the construction industry, referred to in the definition of "sector" in section 126, except those employees for whom a trade union other than one of the affiliated bargaining agents holds bargaining rights.
>
> **Employee bargaining agencies, vesting of rights, etc.**
>
> **156.** Where an employee bargaining agency has been designated under section 153 or certified under section 154 to represent a provincial unit of affiliated bargaining agents, all rights, duties and obligations under this Act of the affiliated bargaining agents for which it bargains shall vest in the employee bargaining agency, but only for the purpose of conducting bargaining and, subject to the ratification procedures of the employee bargaining agency, concluding a provincial agreement.

8. Simply put, this means that the OPTC is the bargaining agent, but only for the purposes of negotiating the Provincial Collective Agreement and that the employer is deemed to have recognised all of the Local Unions as bargaining agent for employees in the industrial, commercial and institutional sector of the construction industry. It seems to me, then, that the OPTC, the UA International, and the Local Unions all make up the "trade union" in subsection 63(2) of the Act. To whom then must the application be delivered for the purposes of delivery under subsection 63(3)?

9. In *Phase 4 Electrical Contracting Ltd.*, [2001] OLRB Rep. Sept./Oct. 1232, the Board reviewed the prior case law on the point and concluded:

> I am of the view that employees in the ICI sector of the construction industry are *represented* within the meaning of section 63(2) of the Act by both the employee bargaining agency *and* by the employees' local union (or affiliated bargaining agent). Therefore, it appears to me that an application under section 63(2) of the Act that relates to the ICI sector may be delivered to either the employee bargaining agency or to the local union with jurisdiction in the geographic area in which the employees were working on the date of the application and that such delivery will comply with section 63(3) of the Act and Rule 139 of the Board's Rules, provided, of course, the delivery is otherwise timely.

10. In this case, that conclusion makes practical sense. This case is typical of many of the termination applications the Board receives. The applicants are represented in this case, although many applicants in termination applications are not. They state that they named the UA International because they had received membership cards from the UA International. They delivered the application to Local 527, the local union from which they had received their membership cards, of which they were members, and within whose geographic jurisdiction they worked on the application

date. Local 527 was the affiliated bargaining agent among all the Local Unions that was best able to investigate the situation with respect to the application, and to have had any ongoing contact with the employees in the bargaining unit. It found no difficulty in filing a detailed response to the application. Indeed, the applicant has asked for particulars of some of the allegations in the response. There is clearly no practical prejudice to the party that will carry the burden of responding to the application.

11. There is still the question of notice to all of the affiliated bargaining agents, all of whom are entitled to notice of an application to terminate the bargaining rights that they hold. *Phase 4 Electrical Contracting Ltd.*, above, relied on a practice at the time under which the Board delivered a notice to the employee bargaining agency which directed it to notify all of the affiliated bargaining agents. The Board has not followed that practice for some time, without apparent concern in the community, despite the fact that Information Bulletin No. 7 suggests that the Board will do so. However, even when the Board did follow such a practice, delivery by the applicant to the employee bargaining agency and all affiliated bargaining agents was not required. The Board's own notice, which would be delivered a day or two after that application was filed, was sufficient notice.

12. The Board no longer follows that practice. The question is whether notice should be provided by the applicant, the Board or by the party to whom the application is delivered. The reality in almost all cases is that the "home" local union of the bargaining unit employees in question will bear the burden of investigating and responding to the application. The Board is hard-pressed to identify a case in which a local union geographically remote from the site on which employees were working has appeared in a termination application to protect its own bargaining rights as distinct from those of the "home" local union or of the employee bargaining agency.

13. To require the applicant to do so is to require a construction employee who is often unrepresented (though not in this case) to understand the structure of province-wide bargaining in the industrial, commercial and institutional sector, and to obtain an up-to-date list of the addresses of the employee bargaining agency or (as in this case) its components, and each of the affiliated bargaining agents. To require that a separate copy of the application be sent to each of them would result in considerable expense and use of paper to produce no discernable benefit to any of the recipients.

14. The Board would similarly depend on the parties providing the Board with an updated list of addresses for each affiliated bargaining agent, which depends on the employee bargaining agency or a local union remembering to advise the Board of current addresses.

15. It makes much more sense to require the employee bargaining agency, if it or a component of it, receives an application to advise all affiliated bargaining agents of the application. If the local union receives the application, it makes sense to require the local union to advise the employee bargaining agency and each of the affiliated bargaining agents of the application. The Board is unaware of any employee bargaining agency that does not communicate with its affiliated local unions by some form of electronic communication. The employee bargaining agency or a provincial body that makes up part of the employee bargaining agency invariably acts as a central co-ordinating body for the union. It will, if nothing else, have a complete and up-to-date list of local unions that are the affiliated bargaining agents.

16. This is perhaps an odd result in that the burden of delivery of notice of a termination application falls on an entity that is one of the responding parties. However, there are many benefits to trade unions of the structure of provincial bargaining. This is one of the burdens that comes with it. More importantly, the manner in which unions are structured is a matter internal to each trade union. Subject to applications under sections 145 to 150, a trade union may create, divide or amalgamate local unions without seeking the Board's permission or even notifying the Board or anyone else. Councils (other than those that are part of an employee bargaining agency) may also be created, dissolved and amalgamated at will. The current address for all the affiliates of a local may change because of such structural changes or because a local union moves its office. The Union will be aware of these internal changes before anyone else. They may or may not be broadcast to all of its members or the general public. Accordingly, it seems to me that to require the local union that receives the application to provide notice to all the other affiliates who are parties to the collective agreement is both the most efficient and the least costly manner to accomplish the act of delivery to the other, less directly involved, parties who make up the "trade union" referred to in subsection 63(3) and is a manner of delivery that causes the least possible prejudice to any party to the proceeding.

17. It is worth noting that under the Board's former practice, the Board provided notice only to the employee bargaining agency. That notice directed the employee bargaining agency to advise all affiliated bargaining agents. The former practice placed the burden of giving notice to most of the components of the union on the employee bargaining agency rather than on the Board.

18. I would hasten to add, however, that in this case the applicants delivered the application to their "home" local union, the one that would clearly bear the burden of responding to the application. The result may not always be the same if there is any suggestion that the application had been delivered to a local union with no connection to the employer or the employees in the bargaining unit. I would prefer to add to the conclusion in *Phase 4 Electrical Contracting Ltd.*, above, the caveat that the application be delivered to an appropriate affiliated bargaining agent (as it was in *Phase 4 Electric*) or to the employee bargaining agency for the delivery to be valid.

19. Therefore the style of cause in this application is amended to identify the responding party as the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, on its own behalf and on behalf of all of its affiliated bargaining agents.

20. The Board further directs Local 527 to provide notice of this application to all affiliated bargaining agents and the employee bargaining agency of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada by providing a copy of this decision to them. Delivery may be made by email, and a pdf copy of this decision may be obtained from the Board by calling the Registrar's office.

21. This application was filed on April 9, 2010. The employees who are affected by this application are covered by a collective agreement between the responding party and the OPTC with an effective date of May 1, 2007, until April 30, 2010. The bargaining unit description in that collective agreement is as follows:

> all qualified and/or certified journeymen and apprentice plumbers, steamfitters, pipefitters, welders, and working foremen employed by

> Kidd Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above that rank.

Having regard to the provisions of section 63(2) of the Act, the Board finds that this application is timely.

22. It appears to the Board on an examination of the evidence before it, that not less than forty per cent of the employees in the bargaining unit had expressed a wish not to be represented by the trade union at the time the application was filed.

23. The Board directs that a representation vote be taken of the employees of Kidd Mechanical Inc. employed in the bargaining unit described in paragraph 21 above. All those employed in that bargaining unit and at work on the application filing date will be eligible to vote.

24. The vote will be held on Friday, April 23, 2010. Vote arrangements are as set out on the attached "Notice of Vote and of Meeting".

25. Voters will be asked to indicate whether or not they wish to be represented by the responding party in their employment relations with the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and all of its affiliated local unions.

26. The employer is directed to post copies of this decision and of the "Notice of Vote and of Meeting" in a location or locations where they are most likely to come to the attention of those eligible to vote. These copies must remain posted for a period of 30 days.

27. Any party or person who wishes to make representations to the Board about any issue remaining in dispute which relates to the application for termination of bargaining rights, other than status disputes, must file a detailed statement of representations with the Board and deliver it to the other parties, so that it is received within five days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken. Representations with respect to any status disputes must be made in accordance with the directions provided in Information Bulletin No. 10: Status Disputes in Termination Applications in the Construction Industry.

28. The matter is referred to the Registrar.

0022-10-M Hospitality & Service Trade Union, Local 261 and Jeffrey Segat, Applicants v. **Novotel Canada Inc., Accor Canada Inc., Novotel Ottawa**, Responding Party

Certification – Discharge – Interim Relief – Unfair Labour Practice – The union applied for interim reinstatement of the worker contending he was terminated for his involvement in the organizing drive – The evidence showed that prior to his termination the union had signed up five members (in a 65 member bargaining unit) and after his termination

the union signed up an additional 37 members and filed for certification – As the worker's termination did not stall the organizing drive (indeed it seemed to propel it), the Board found that interim relief was not necessary to prevent irreparable harm nor was it necessary to achieve other significant labour relations objectives – Accordingly all of the conditions under s. 98(2) were not met – Application dismissed

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Sean McGee, Ashley Hardy* and *Jeffrey Segat* for the applicant; *Michael G. Sherrard, Katherine Ford* and *Rafaël Ballester* for the responding party.

DECISION OF THE BOARD: April 21, 2010

1. This is an application for an interim order of reinstatement under the *Labour Relations Act, 1995*, S.O. 1995, c.1 as amended (the "Act"). It was filed on April 6, 2010.

2. There is a pending unfair labour practice complaint (Board File No. 0021-10-U) which will be dealt with by the Board at a later date. There has also been an application for certification filed with the Board by the applicant on April 8, 2010 (Board File No. 0082-10-R). The vote in that matter was held and counted on April 15, 2010. At best, the union will have garnered 50% of the ballots cast, not enough to obtain a certificate on the basis of the vote count. However, the applicant indicated to the Board that it intended to file further particulars in support of its unfair labour practice complaint or file another unfair labour practice complaint altogether. Either way, presumably the union hopes thereby to achieve a remedy or remedies that will help it obtain bargaining rights regardless of the outcome of the vote that was held.

3. Jeffrey Segat was employed as a Cook by the responding party ("the hotel" or "the company") from early 2006, and was terminated on March 18, 2010, whereupon he made a rather voluble and boisterous exit through the hotel's lobby. The parties do not agree on the reasons for his termination. The applicant (or "the union") contends it was unlawfully motivated, as a result of Mr. Segat's involvement in an organizing drive, and seeks, among other things, Mr. Segat's interim reinstatement. The employer takes the position that Mr. Segat was legitimately terminated for reasons of performance, and in any event, that it had no knowledge of an organizing campaign or of Mr. Segat's involvement in such a campaign.

4. This application for interim relief is governed by section 98 of the Act. The union contends that all the elements of section 98 are satisfied, whereas the employer concedes only that there is a serious issue to be decided in the pending proceeding (subsection 98(2)2), but that no other elements of subsections 98(2) and (3) have been established.

5. A number of declarations were filed in this matter. Mr. Segat and Ashley Hardy, an organizer for UNITE HERE, have made declarations on behalf of the applicant. Declarations on behalf of the employer have been made by: Scott Lucas, the hotel's Executive Chef and Mr. Segat's direct supervisor; Frederic Louvet, the Food & Beverage Manager; Wendy Duross, Human Resources Manager; Jema Blidi, Housekeeping Manager; and Ralph Ballester, General Manager.

6. This matter proceeded by way of consultation on April 16, 2010. At the outset I indicated to the parties that the purpose of the consultation was to elicit further information to enable the Board to answer the questions posed by the provisions of section 98. I also indicated that the inquiry was not for the purpose of making findings of fact whether or not an unfair labour practice had been committed. That function is left to the panel of the Board assigned to the pending complaint.

7. There were factual disputes between the parties, but in my view, they are not material to the disposition of this matter. They may very well be material in the pending complaint.

8. According to the declaration and oral information provided by Ms. Hardy, the union's organizing campaign consisted of weekly meetings between Ms. Hardy and Mr. Segat, as well as hundreds of visits by Ms. Hardy and Mr. Segat with certain employees of the hotel, either in their homes or in public places, from the period September 2008, when Mr. Segat contacted UNITE HERE about unionization, until his termination about 18 months later. Throughout that period they were assisted in the organizing by a number of other employees. Apparently there was no leafleting or other physical manifestations of an organizing campaign at the workplace itself. Ms. Hardy says in her declaration that Mr. Segat became known in the workplace as "the union guy", although she does not say whether she heard him referred to in such terms or learned about it second hand. Mr. Segat himself makes no claim in his declaration to being known as "the union guy". He does say he spoke to numerous employees about unionization.

9. After Mr. Segat's termination, Ms. Hardy says that the union continued to visit employees. She estimated there were about forty such post-termination visits.

10. By the time Mr. Segat was terminated in mid-March 2010, the union signed up five members, including Mr. Segat, in a bargaining unit that the union estimated consisted of 65 employees. Mr. Segat and two other employees signed applications for membership on June 24, 2009. I was not informed when the other two applications for membership were obtained. In any event, it was suggested in Ms. Hardy's declaration that the union's strategy was first to speak to the employees and later release membership cards to the workplace population at large. Apparently, the timing of that release coincided with Mr. Segat's dismissal.

11. After Mr. Segat was dismissed, the union signed up 37 members and filed the application for certification. At that point, with a total of 42 membership cards, it appears the union had the support of about 65% of the bargaining unit.

12. There are a great number of discrepancies between the parties concerning the justification for Mr. Segat's termination. Mr. Segat says he was a model employee. Mr. Lucas, his supervisor, and Mr. Louvet, another manager, paint a very different picture (although the company conceded it did not have cause at common law for Mr. Segat's termination). Mr. Lucas produced a letter of warning dated September 21, 2009, which he insists he tried to present to Mr. Segat, who he says refused it. Mr. Segat, on the other hand, claims that he never had any disciplinary encounter with Mr. Lucas. I do not find it necessary to deal with these, and other discrepancies in the pleadings and declarations. The Board can sort them out when it hears the unfair labour practice complaint. I think this matter can be decided on the basis of other information, particularly the information I have outlined above concerning the union's campaign.

***

13. The provisions of section 98 of the Act directly relevant to this matter are as follows:

> **98.** (1) On application in a pending proceeding, the Board may,
>
> ...
>
> (b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and
>
> ...
>
> (2) The Board may exercise its power under clause (1)(b) or (c) only if the Board determines that all of the following conditions are met:
>
> 1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.
>
> 2. There is a serious issue to be decided in the pending proceeding.
>
> 3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.
>
> 4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.
>
> (3) The Board shall not exercise its powers under clause (1)(b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.
>
> (4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant.

14. The scheme of section 98 is such that the union must establish on a balance of probabilities all the conditions in subsection 98(2). If it does so, then the Board must consider whether, under subsection 98(3), the impugned act of the employer appears unrelated to the exercise of rights under the Act by an employee. In this case, I am not satisfied that the union has established all the conditions of subsection 98(2). In particular, I do not see how the interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.

15. Assuming without deciding that, at the time of Mr. Segat's dismissal, a campaign to establish bargaining rights was underway, Mr. Segat's dismissal appears to have had no deleterious effect upon the union's ability to attract new members. Prior to his termination, the union conducted hundreds of employee visits, and secured a total of five members. After his termination, and upon

releasing applications for membership generally to the employees, the union conducted about 40 employee visits and attracted 37 additional members. To the extent the union's strategy had been to speak to, and encourage support from, the workers over a lengthy period of time, and then solicit membership, it appears the strategy worked despite Mr. Segat's dismissal. After his employment was terminated, the union garnered more than enough members to warrant a representation vote. Going into the vote it had the support of about 65% of its proposed bargaining unit. Mr. Segat's termination did not seem to intimidate his co-workers from becoming union members. If anything, it may have emboldened them.

16. Counsel for the union submitted that the applicant would suffer irreparable harm without Mr. Segat's reinstatement, and seemed to suggest that that the proof of this was borne out by the result of the representation vote. I do not see it that way. The union obtained more than sufficient support to get a vote. A majority of the employees decided to join the union within the last three-week period in an 18-month campaign *after* Mr. Segat's termination and *after* he loudly protested his dismissal as he left the workplace on March 18, 2010. There was no information provided in either Mr. Segat's or Ms. Hardy's declarations that would suggest the termination frightened off any individuals who might otherwise have been sympathetic to the union. Ms. Hardy stated in her declaration that the termination has had a serious impact on the union's campaign, and that it signalled to employees that their job security was threatened if they supported the campaign. But these are merely bald assertions without any particulars to support them. I would have expected to see examples in Ms. Hardy's declaration of some sort of employee expression of fear or intimidation in the course of her ongoing employee visits. No such incidents are reported.

17. There are two fairly recent Board cases that illustrate the distinction between harm that is irreparable, and harm that falls short of being irreparable. In *Five Brothers Hospitality Partnership Limited c.o.b. Holiday Inn St. Catharines*, [2008] OLRB Rep. September/October 633 the inside organizer signed up twenty employees within the first 13 days of the organizing drive, and was laid off on the fourteenth day. Thereafter, the union managed to obtain only three more membership cards. The Board concluded that the laid off organizer had been instrumental in the organizing campaign, and that her absence from the workplace put an end to the campaign's momentum. The Board found that the union would be irreparably harmed without the organizer's presence in the workplace, and because the union established all the other conditions under subsection 98(2) as well as an appearance that the lay-off was related to the exercise of rights under the Act, the Board ordered her reinstatement.

18. The facts in *1319557 Ontario c.o.b. Upper Canada Price Chopper*, [2009] OLRB Rep. July/August 513 stand in contrast to the *Five Brothers* case. There the fired union organizer collected four signed membership cards in a seventeen-week period preceding his termination. After his dismissal, the trade union obtained three more cards in a three-week period. The Board concluded that the organizer's continued presence in the workplace was not absolutely essential to the momentum of the organizing campaign. Accordingly, since the trade union had failed to establish that the organizer's reinstatement would prevent irreparable harm or achieve some other significant labour relations objective, the Board was prohibited from reinstating the dismissed employee on an interim basis.

19. This case is more like the *Price Chopper* decision. The union's organizing campaign does not appear to have been negatively affected by Mr. Segat's dismissal. The vast majority of the membership cards were obtained after he was no longer present in the workplace. The union got

enough support to warrant a representation vote. It is difficult to see any harm, institutional or otherwise, suffered by the applicant if Mr. Segat is not reinstated. There was no other argument offered by the union to suggest that Mr. Segat's reinstatement would serve some other significant labour relations objective. I therefore conclude that the union has failed to establish the condition set out in paragraph 3 of subsection 98(2) of the Act.

20. Because a finding that the interim relief is not necessary to prevent irreparable harm or to achieve other significant labour relations objectives is fatal to the application, it is unnecessary to consider the other conditions in subsection 98(2) or determine the "appearance" issue in subsection 98(3).

21. The application is dismissed.

22. The unfair labour practice complaint ought to be scheduled for hearing as soon as is reasonably possible.

3277-09-R Jason Bonney, Applicant v. Service Employees International Union Local 2, Brewery, General and Professional Workers' Union, Responding Party v. **Ontario Lottery and Gaming Corporation c.o.b. as OLG Brantford Casino**, Intervenor

Bar – Bargaining Rights – Termination – The Board issued reasons for its earlier "bottom line" determination that the applicant ought to be barred from pursuing a second termination application just two months after a first such application was dismissed when the union won the representation vote – The Board held that the exercise of its discretion under s. 111(2)(k) involves a careful weighing of competing interests and objectives – The employees had been given the opportunity to determine by secret ballot whether they wanted the union to continue to represent them, and a majority of them voted in favour of continued representation – Once a vote has been taken and counted, there must be a compelling reason to subject the stability of the collective bargaining relationship to the uncertainty of another test of the union's representation rights – No unusual circumstances were present here – The union should not be distracted from its obligations to bargain by having to defend a second attack on its bargaining rights – Application dismissed

BEFORE: *Patrick Kelly*, Vice-Chair.

DECISION OF THE BOARD: March 23, 2010

1. This is an application for termination of bargaining rights filed under subsection 63(2) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). It was filed with the Board on February 5, 2010.

2. By "bottom line" decision dated March 2, 2010, I terminated the application and indicated that written reasons would issue at a later date. On March 3, 2010, the intervenor employer filed a request for reconsideration of my bottom line decision. This decision sets out my reasons for terminating the application. Since the intervenor has indicated that, once I issue my written reasons,

it intends to file full and detailed submissions in addition to those already made in its request for reconsideration, I have determined not to deal with the request for reconsideration at this time. I will deal with it after the intervenor files its additional submissions or twenty days after the issue of this decision, whichever first occurs.

3. A previous subsection 63(2) application to terminate the responding party union's ("the union") bargaining rights ("the first application") was filed by the same applicant on November 24, 2009 and dismissed in accordance with the results of the representation vote (32 in favour of the union, 27 against, 4 sealed ballots all challenged by the union) in a Board decision dated December 8, 2009.

4. In its decision of February 10, 2010 directing a vote in this matter, the Board noted the union's motion pursuant to subsection 111(2)(k) of the Act requesting the Board to exercise its discretion not to entertain this application. The Board ordered that the ballot box be sealed, and directed the parties to make full written submissions concerning the union's motion, including any submissions as to whether the issue raised by the union could be decided on the basis of the written submissions.

5. All the parties filed written submissions. The applicant did not say whether the Board ought to decide the matter on the basis of the written submissions, but did request that the ballot box be opened and the ballots counted. The union was content to have this issue decided on the basis of the written submissions. The intervenor employer, on the other hand, submitted that the issue should be dealt with in a hearing.

6. Having reviewed all the submissions, I was of the view that the issue raised by the union could be determined solely on the basis of the submissions, without a hearing, because the essential facts do not appear to be in dispute, although the intervenor and the union do appear to draw different conclusions from them.

7. Section 111(2)(k) of the Act reads:

> **111.**(2) Without limiting the generality of subsection (1), the Board has power,
>
> ...
>
> (k) to bar an unsuccessful applicant for any period not exceeding one year from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing the employees within any period not exceeding one year from the date of the dismissal of the unsuccessful application;

8. The collective agreement that was operating when the first application was dismissed, and that continued to operate when this application was filed, was for a term from July 24, 2008 until February 15, 2010. In its submissions, the union claims, and no one appears to dispute, that it sought

and confirmed bargaining dates with the intervenor in October 2009, and then served notice to bargain, before the first application was filed. The agreed bargaining dates were December 10, 2009, January 12, 13, 20 and 21, 2010. The intervenor cancelled the December 10 session, and appears to have cancelled January 13 as well. Consequently, there was no initial exchange of proposals until January 12, 2010, and no bargaining of any substance on the exchanged proposal until January 20 and 21, 2010. On January 21, 2010, at around 3:30 p.m., the union opted to stop bargaining, because it was not satisfied that sufficient progress had been made to that point, and sought the appointment of a conciliation officer. By letter dated February 1, 2010, the Director of Dispute Resolution Services/Mediation Services of the Ministry of Labour notified the union of the appointment of a conciliation officer. Meetings between the union, the intervenor and the conciliation officer were arranged for February 24, 2010 and March 1, 2010.

9. In his submissions, the applicant explains that he was asked by some employees to file the current application after discovering that there had been only two days of bargaining, and that any other bargaining would occur (during the conciliation meetings) only after the collective agreement expired. The applicant says there is dissatisfaction among the ranks that the union has not been able to reach a new collective agreement before the expiry of the most recent one. The applicant also refers to the following as reasons why he filed the current application:

- there is no office at the workplace where union members can talk to someone about issues or questions;
- the union's stewards are not responsive to the membership's questions;
- there have been only two membership meetings during the course of the most recent collective agreement;
- a lot of members are upset that the union wrote to the Board after the dismissal of the first application, requesting a minimum three-month bar on any future applications to terminate bargaining rights;
- some union members are upset that Pit Managers were not included in the bargaining unit when the union was certified.

10. The intervenor submits that the union has had a reasonable opportunity, without undue impediment, to demonstrate its ability to bargain for a collective agreement on behalf of the employees it represents within the 90-day "open period" preceding the expiry of the collective agreement on February 15, 2010, and that therefore this application ought to be entertained, and the ballots counted. The intervenor finds support for this submission in the Board's jurisprudence, and refers to a passage from paragraph 16 of *Seven-Up (Ontario) Limited*, [1971] OLRB Rep. Dec. 791. That passage reads:

> 16. The *Trinidad Leaseholds* case and subsequent decisions based on its principles stand for the proposition that when a second application for certification or termination is made upon the heels of a prior application involving the same parties, in determining whether it should refuse to entertain the second application, the Board must balance the right to test an incumbent trade union's strength among the employees it represents at an appropriate time against the maintaining of continuity and stability in an existing collective bargaining relationship. Stated another way, once a representation issue has been dealt with on its merits and in the absence of special circumstances, then an incumbent trade union ought to be afforded a reasonable opportunity to demonstrate, without undue impediment, its ability

> to bargain with that employer for a collective agreement on behalf of those employees it represents.

11. The intervenor appears to interpret this passage as laying down a test along the following lines:

> i. Has the trade union been afforded a reasonable opportunity to demonstrate its ability to bargain? If the answer is yes, proceed to question (ii);
>
> ii. Have there been any undue impediments to the union's ability to bargain? If not, the application ought to be entertained;
>
> iii. Alternatively, are there special circumstances allowing for a second vote? If there are, the application ought to be entertained. Question (iii) may not necessarily have to be determined if the answer to question (i) is yes, and the answer to question (ii) is no.

12. The intervenor further submits that the following additional factors ought to be taken into account in the exercise of the Board's discretion under section 111(2)(k) in favour of entertaining the application:

- the result of the vote in the first application was close;
- the union did not bargain throughout the entire day on the last scheduled day of bargaining on January 21, 2010;
- the union has not held employee meetings or posted updates on the current round of bargaining;
- the union has deferred an arbitration of a rights grievance to the outcome of the current round of bargaining;
- the bargaining unit is 9% smaller than it was when the first application was filed;
- without the benefit of a count of the vote now, the employees might ultimately turn down the terms of a negotiated collective agreement and refuse to strike, leaving the intervenor and the union in a state of unstable labour relations.

13. I will not set out in detail the union's lengthy written submissions at this point. Suffice to say that I largely agree with those submissions, and have adopted a number of them in the analysis below.

14. I am not persuaded by the intervenor's interpretation of the *Seven-Up* passage reproduced at paragraph 10 above. That passage does not articulate any particular hard and fast test to guide the exercise of discretion not to entertain a subsequent application. Nor am I aware of any other decision that purports to establish such a test. In any event, the intervenor's proposed test is problematic in that it seems to suggest the third prong of the test is optional, but fails to make clear the conditions under which it would or might be triggered.

15. What the *Seven-Up* decision points out is that the Board's discretion not to entertain a subsequent application must be exercised in a manner that takes into account the balancing of competing interests and objectives. The *Seven-Up* decision and the Board's jurisprudence generally suggest that when the wishes of employees have been tested in an application, and another application is filed soon afterward, in the absence of special or unusual circumstances, the Board will not likely be inclined to risk labour relations instability by repeatedly testing the wishes of the employees where a party raises an objection.

16. This case is somewhat different factually from many other decisions in the Board's jurisprudence in that the second application was filed, not merely a few days after the first application was dismissed, or even before the first application was dismissed, but a full 58 days after the dismissal.[1] I accept that the passage of nearly two months between the applications may be a factor in the applicant's favour. Nevertheless, the Board must still balance the competing interests in the determination of the union's motion.

17. It is not unusual for the parties to an existing collective agreement to not have bargained a renewal agreement prior to the expiry of the term of the existing collective agreement. In fact, it is a very common situation. In this case, the union appears to have been reasonably diligent in obtaining a commitment from the intervenor to bargain on five occasions prior to the end date in this collective agreement of February 15, 2010. The fact that not all the dates were used for collective bargaining purposes cannot be laid at the feet of the union.

18. It is not unusual for one party or the other in collective bargaining to form the impression that the bargaining is proceeding at too slow a pace or is otherwise unproductive, and to make the decision to seek the assistance of a conciliation officer rather than spend further unproductive time in face-to-face negotiations. The union's decision not to proceed late into the evening of the last scheduled bargaining session on January 21, 2010, but rather to make an immediate application for conciliation services, cannot be viewed as particularly unusual. Nor is there anything even remotely remarkable about the scheduling of conciliation meeting dates weeks after the appointment of the conciliation officer (and, coincidentally, after the expiration of the collective agreement), given that it requires the alignment of mutually acceptable dates in the calendars of three parties, including that of the conciliation officer.

19. The union has not dragged its feet and has been reasonably diligent to see that the collective bargaining process moves forward. A second application to terminate bargaining rights will no doubt divert the union's attention from the important task at hand and require it to direct its resources towards yet another defence of its bargaining rights.

20. The applicant raises issues that go the quality of the union's representation of the employees (the number of membership meetings, the alleged lack of responsiveness by the union

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[1] In *Chapleau Lumber Co. Ltd.*, [1973] OLRB Rep. November 574 and *Dunnville Supermarket Limited*, [1980] OLRB Rep. Aug. 1193 the second application was filed two days after the Board's written decision dismissing the first application. In *Venture Industries Canada Ltd.*, [1993] OLRB Rep. July 707 the period between dismissal of the first application and the filing of the second was three days. In *DSI Industries*, [2001] OLRB Rep. Mar./Apr. 317 (April 3, 2001), *Value Village Stores Inc.*, [2004] CanLII 24994 (ON LRB) and *University of Toronto*, [2008] O.L.R.D. No. 2843 (July 10, 2008) the second application was made even before the Board issued its written decision dismissing the first application. In all of these cases, the Board refused to entertain the subsequent application.

stewards), quite apart from the collective bargaining process. Those issues may be relevant considerations in other types of proceedings before the Board, but they do not constitute special or unusual circumstances that would justify testing the employees' wishes a second time inside of two months following the dismissal of the first application. For similar reasons, I reject the intervenor's assertion that the union's alleged lack of communication with the employees concerning the progress of negotiations ought to be given any weight in this motion. I also fail to see the relevance of the union's decision to defer the arbitration of a rights grievance.

21. Similarly, the applicant's complaint that the union has not established an office at the intervenor's workplace is also irrelevant to the question I have to decide here, as is the question of the exclusion of the Pit Managers in the course of the establishment of the union's initial bargaining rights. Furthermore, the union's request for a bar following the dismissal of the first application was something the union was entitled to request, even if it offended some of the bargaining unit members.

22. The intervenor raises the closeness of the first vote. The fact of the matter is that the union gained a majority of the ballots cast. The vote in the *DSI Industries* and the *Value Village Stores* cases, referred to in the first footnote of this decision, was won by the respective trade unions by a single ballot in each instance. If there is any weight to be given the closeness of the vote, it is not substantial.

23. I give no weight to the intervenor's argument that the composition of the bargaining unit has changed. As the Board in the *Venture Industries* decision, also referred to in the first footnote, stated at paragraph 15:

> 15. It would be unrealistic and unduly disruptive to collective bargaining to require a trade union to establish that it enjoys the support of the bargaining unit it represents every time there is a change in the employees that make up that bargaining unit.

24. Finally, I am not persuaded by the intervenor's argument concerning the possibility that the employees might reject any new collective agreement and also decline to engage in a strike, thus leading to labour relations instability. This argument is wholly speculative. It would not be appropriate to base the decision in this matter on future events that may or may not occur.

25. As I have indicated, the exercise of discretion under section 111(2)(k) involves a careful weighing of competing interests and objectives. In this case, the employees have a democratic interest in the opportunity during the open period to determine by secret ballot whether or not they will continue to be represented by the union. They have recently had that opportunity, and a majority of them decided in the union's favour. A counted vote that reflects the true wishes of employees is a pivotal event in any representation application, and the Board has always considered it a highly significant factor in cases where it has been asked to exercise its statutory discretion not to entertain a subsequent application. The Board is quite reluctant to exercise that discretion in circumstances where no vote has taken place or an applicant withdraws an application to escape an anticipated

defeat in a vote.[2] That is not the situation here. The vote in the first application, though close, was from all appearances fair, reflective of the true wishes of the voters, and conclusive. That factor weighs heavily against entertaining precisely the same type of application brought by the same applicant, and the mere fact that there has been a nearly two month period since the dismissal giving effect to the vote and the filing of this application does little to reduce that factor's significance.

26. It would appear from the applicant's submissions that the second application was filed because some of the employees are anxious that they are in the position of working under the terms of an expired collective agreement, and some were upset by the union requesting a bar of the first application. There may also be some concern over the quality of the union's representation of the employees. The Board is not concerned with the employees' motivations for bringing the application. Neither the applicant nor the employees who support an application to rid themselves of their trade union are obliged to say why they wish to exercise their rights. However, once a vote has been taken and counted, there must be a compelling reason to subject the stability of the collective bargaining relationship to the uncertainty of yet another test of the union's representation rights. In my view, having considered and weighed all the relevant factors, the stability of the bargaining relationship in the circumstances of this case prevails over the wish of the applicant to challenge the union's bargaining rights a second time.

27. The intervenor is directed to post a copy or copies of this decision in a location in the workplace where it is likely to come to the attention of all the employees affected by the application.

0264-09-G; 0266-09-G United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Applicant v. Electrical Power Systems Construction Association and **Ontario Power Generation Inc.**, Responding Parties; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Applicant v. Aecon Industrial Division of Aecon Group Inc., Responding Party

Construction Industry Grievance – The Board was asked to determine whether OPG's decision to bar an individual (an employee of Aecon) from its sites is subject to the "just cause" standard established by the collective agreement between the UA and EPSCA – OPG acknowledged that it was a signatory to the EPSCA agreement, but asserted that it was acting as an owner, constructor or licensee, and not as an employer, when it banned the individual – The Board held that OPG was exercising power in respect of the grievor's employment when it banned him from its sites – The Board found that there is nothing in the Act or the EPSCA Agreement that permits an entity to claim it is not subject to the Agreement when the entity wears an "owner" hat as opposed to an "employer" hat – OPG's decision to ban the employee was independent of the employment relationship the employee had with Aecon; OPG's actions

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[2] In applications for certification, once a vote has been taken and, as a result, the application is dismissed, there is a one-year statutorily mandated bar to any subsequent application by any trade union. The Board has found that a rationale for the mandatory bar is to grant the workplace a period of labour relations repose. Many years ago, prior to the introduction of a mandatory bar in the Act and its predecessor statutes, the Board routinely exercised its discretion to impose a six-month bar prohibiting subsequent applications for certification that followed on the heels of an application dismissed on the basis of the results of a vote.

come within the scope of the EPSCA Agreement, and it must establish that those actions meet the standard of the Agreement – Matter continues

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *S. B. D. Wahl, C. Janusz, T. Snooks* and *S. Marshall* for the applicant; *Patrick Moran* for the Electrical Power Systems Construction Association and Ontario Power Generation Inc.; *John Wolfe* and *Phil Schofield* for Ontario Power Generation Inc.; *Carl Peterson, S. Gagne, K. Milton* and *T. Norris* for Aecon Industrial Division of Aecon Group Inc.

DECISION OF THE BOARD: March 31, 2010

1. These are two referrals of grievances to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S. O. 1995, c. 1 as am. (the "Act") relating to a one week suspension imposed on Stephen Marshall by Aecon Industrial Division of Aecon Group Inc. ("Aecon") and to Ontario Power Generation Inc. ("OPG") prohibiting Mr. Marshall from attending at any OPG work site. The Board by decision dated June 19, 2009 determined it would proceed to hear the parties' submissions as to whether OPG's decision to bar Mr. Marshall from its sites is subject to the "just cause" standard established by the collective agreement between the applicant and the Electrical Power Systems Construction Association ("EPSCA").

2. The Board in that decision observed if OPG's decision is not subject to the "just cause" standard in that collective agreement the grievance referral as against OPG must be dismissed. If it is, then the matter will proceed to deal with the "justness" of OPG's decision.

3. The applicant's position is quite straightforward and simple. OPG is bound by the collective agreement between it and EPSCA. As a party bound by the EPSCA collective agreement with the applicant (the "EPSCA Agreement"), OPG is bound by its terms, including the grievance and arbitration provisions of articles 35 and 36, and section 15(2)(d).

4. The position taken by OPG was set out in the Board's June 19th decision at paragraph 12:

> OPG takes the position that its decision to bar Mr. Marshall is not subject to review by the Board in this proceeding because OPG was not the employer of Mr. Marshall. While OPG acknowledges it is bound by the collective agreement between the applicant and EPSCA, it says it was acting as the owner, constructor and licencee of the Canadian Nuclear Safety Commission. OPG contends when it is acting in that capacity, there is no authority to review its decisions in proceedings under the collective agreement and under section 133 of the Act.

5. Mr. Marshall was hired by Aecon to work at the Pickering Nuclear Generating Station ("Pickering NGS") in October, 2008. He was laid off by Aecon after OPG revoked his qualification to work at the Pickering NGS and subsequently barred him from working at any of its sites. OPG by letter dated March 11, 2009 to the applicant stated:

> Following the layoff of Mr. Steve D. Marshall by Aecon, OPG reviewed the impact of his performance on the operation of our Nuclear Plant. Please be

> advised that Mr. Steve D. Marshall will not be permitted on any Ontario Power Generation (OPG) Site as a result of his inappropriate conduct on January 31, 2009 in his violation of the Nuclear Safety and Control (NSC) Act Section 48(i). For clarity, this includes not only working for OPG, but also for any contractor on an OPG site. We ask for your co-operation in refraining from referring Mr. Marshall for employment to any OPG site.

6. The applicant contends the letter sent by OPG on March 11th to the applicant is contemplated by section 15(2)(d) of the EPSCA Agreement. Section 15(2)(d) provides:

> If, at the time of termination, an Employer is not prepared to consider an employee eligible for rehire, the employee will be notified in writing and a copy of said notification will be forwarded to the Accredited Union Representative.

The applicant submits OPG was unjustified in barring Mr. Marshall from its property and therefore its action was the proper subject matter of a grievance pursuant to section 35.7 of the EPSCA Agreement. Section 35.7 provides:

> Alleged unjustified termination, discharge, suspension or disciplinary action may be grieved beginning at First Step.

The applicant also submits the grievance over OPG barring Mr. Marshall from its sites is not only contemplated by section 35.7 of the EPSCA Agreement, but comes squarely within section 35.1. The material portion of section 35.1 states:

> Grievances within the meaning of the grievance and arbitration procedure shall consist only of disputes about and [sic] interpretation or application of particular clauses of this Agreement and about alleged violations of this Agreement.

The applicant points to section 36.1 of the EPSCA Agreement to argue its dispute with OPG in respect of Mr. Marshall is precisely the sort of matter that must be resolved through the arbitration process in the EPSCA Agreement. Section 36.1, like sections 35.1 and 35.7, is not limited to disputes between the applicant and the direct employer of the individual for whom the applicant seeks a remedy. Section 36.1 provides, in part:

> If any dispute about the interpretation or application of particular clauses of this Agreement or about an alleged violation of this Agreement cannot be settled through the grievance procedure contained in Article 35, the matter may be submitted within thirty (30) days of its failure of settlement by grievance procedure by either the Association or the Union to a Board of Arbitration for adjudication.

The applicant argues OPG barring Mr. Marshall from its property was not justified in the circumstances. OPG's decision, the applicant submits, is clearly either a "termination" or "disciplinary action" within the meaning of section 35.7. It points out that section 35.7 is not written to limit its scope to the specific employer of the individual. If an entity bound by the EPSCA Agreement has a role in an individual being "terminated" or receiving "disciplinary action", then the

action taken by that entity, even if it is not that individual's employer, is by reason of sections 35.1, 35.7 and 36.1 of the EPSCA Agreement, subject to review through the grievance process and must be justified.

7. OPG maintains the EPSCA Agreement is binding on OPG when it is acting in the role of an employer. When it is taking action in its capacity as the owner of the property where other employers bound by the EPSCA Agreement are working, or in its capacity as the operator of a nuclear generating station pursuant to a licence granted by the Canadian Nuclear Safety Commission, OPG's actions are not subject to the EPSCA Agreement even when those actions have an impact on employees employed by other employers doing work at OPG's facilities or on its property.

8. OPG submits the EPSCA Agreement applies only to the relationship between the employees in the bargaining unit described in that collective agreement and their employers. That is made clear by the first recital in the EPSCA Agreement which provides:

> Whereas the Association is formed to represent all Employers engaged in construction industry work in the Electrical power systems sector in collective bargaining and on their behalf enter into collective agreements covering their employees in the bargaining unit as hereinafter defined;

When OPG is not the employer of the employees affected it is not an employer for purposes of the provisions in the EPSCA Agreement in issue in this matter. OPG argues its position is bolstered by the language of section 1.4 of the EPSCA Agreement. Section 1.4 states:

> The term "Employers" shall include individual members of the Association and any company, partnership, sole proprietorship, joint venture, contractor, subcontractor or any Employer engaged in the work as defined in Article 1.1 above.

According to OPG, the EPSCA Agreement applies to a bargaining unit, as described in sections 1.1 and 1.3, of employees "engaged in construction industry work". Section 1.1 of the EPSCA Agreement provides, in part:

> EPSCA recognizes the Union as the exclusive bargaining agency for a bargaining unit as defined in Article 1.3 engaged in
>
> (i) all construction industry work under the responsibility of a construction unit* of the Ontario Power Generation Inc., Bruce Power LP or the Hydro One;
> (ii) all Major** construction industry work which is tendered contracted for an operating unit of Ontario Power Generation Inc., Bruce Power LP or the Hydro One;
>
> (iii) work performed by a construction unit of Ontario Power Generation Inc., Bruce Power LP or Hydro One for any operating unit of either company where it has been determined by that operating unit that there does not exist internally the expertise or current staff to perform the work.

> This work shall be performed in the Province of Ontario on the Ontario Power Generation Inc., Bruce Power LP or Hydro One property for the bulk power system.

The other element of the bargaining unit description in section 1.3 of the EPSCA Agreement states:

> The term "employee" shall include all foremen, subforemen, journeymen and apprentices of the Employers as identified in Article 1.1 above. "Subforemen" are working foremen who exercise managerial responsibility and who may use the tools of the trade.

In essence, the bargaining unit and the scope of the EPSCA Agreement cover the employers that are "engaged in" the work described in section 1.1 and their employees. According to OPG, an entity not performing that work cannot be an employer "engaged in" construction industry work and therefore is not an employer subject to the EPSCA Agreement when it is not engaged in that work.

9. There is no doubt in this case that Aecon was an employer within the meaning of the EPSCA Agreement because it was engaged in the work described in section 1.1 of the EPSCA Agreement and had employees described in section 1.3 doing that work.

10. OPG submits the EPSCA Agreement is, in effect, a series of parallel agreements between the applicant and each employer with employees engaged in the work covered by that collective agreement. It submits the grievance arises, in effect, under the collective agreement to which the applicant and Aecon are bound. OPG's decision, it argues, cannot be challenged under the agreement between Aecon and the applicant since it is not a party to Aecon's collective agreement with the applicant.

11. OPG claims if the applicant's position is correct, OPG would be liable for decisions made by other employers about hiring, laying off or disciplining their own employees. For example, articles 7 and 8 of the EPSCA Agreement impose obligations on employers to employ only members of the applicant, provide lists of employees for whom union dues are deducted, and to hire union members who are either on a recall list or are dispatched from the applicant's hiring hall. OPG refers specifically to section 8.6 and the rights and obligations set out in sections 8.6(b) and 8.6(c) of the EPSCA Agreement that can only relate to the entity that is the direct employer of the applicant's members. Sections 8.6(b) and 8.6(c) provide in part:

> (b) The Association office, or the Employer's office, with the approval of the Association, will request the appropriate Local Union office for tradesmen and apprentices required. The Union will furnish competent workmen on request. The Employer shall have the right to determine competency and qualifications and to reject any new applicant and to discharge and discipline any employee for just and sufficient cause.
>
> The Employer shall not discriminate against any employee by reason of his membership in the Union or his participation in its lawful activities.
>
> ...

> (c) Local Union members who are resident in the Province of Ontario will be referred by the Union through the Association office, or the Employer's office, with the approval of the Association. As much as their out-of-work list will permit, the Union will supply members on a fanout basis from the project or work location.
>
> The Employer will either hire such persons or substantiate their reasons in writing for not doing so.

OPG contends it can determine what qualifications a tradesperson must have to perform work at its sites. When OPG engages subcontractors to perform work, it is up to the subcontractor to hire employees and assess their qualifications. The subcontractor and not OPG is the employer within the meaning of section 8.6, and it is up to the subcontractor to determine whether the tradesperson referred by the applicant is competent and qualified, and if the subcontractor refuses to hire the that tradesperson, then it is up to the subcontractor, not OPG, to "substantiate their reasons in writing for not doing so."

12. Both the applicant and OPG reviewed the various provisions of the EPSCA Agreement to point out how the word "employer" is used in different contexts. The applicant and OPG submit there are distinctions in the EPSCA Agreement when the parties use the word "Employer" with an upper case "E" and "employer" with the lower case "e" and when some provisions in the agreement refer to "his Employer" while others simply refer to "the Employer".

13. Aecon in its submissions agreed with OPG and emphasized the EPSCA Agreement must be construed as dealing only with the relationship between employees and their employer. Aecon contends in this case, it and not OPG was the employer. Aecon acted as it did when it learned OPG barred Mr. Marshall from its projects. Because OPG was not Mr. Marshall's employer, its decision to bar Mr. Marshall did not terminate his employment nor did OPG discipline or discharge him. Aecon contends there is nothing in the EPSCA Agreement that entitles the applicant to challenge the decision made by OPG to bar Mr. Marshall from its projects when it was not Mr. Marshall's employer.

14. Whether OPG's decision to bar Mr. Marshall from its property is subject to review through the grievance and arbitration process contained in the EPSCA Agreement and under section 133 of the Act requires the Board to determine whether OPG was, at the time it made that decision in respect of Mr. Marshall, an employer bound by the EPSCA Agreement. If it was an employer bound by the EPSCA Agreement at that time then it is necessary to determine whether the applicant's grievance is a "dispute about [an] interpretation or application of particular clauses of [the] Agreement and about alleged violations of [the] Agreement" as contemplated by section 35.1 of the EPSCA Agreement.

15. The applicant accepts and it is beyond doubt that a decision made by a property owner or general contractor responsible for a construction project to bar an employee of a subcontractor from that project or property justifies that subcontractor removing that employee from the property or project. If there is no other work being done by that subcontractor elsewhere, that subcontractor can properly lay off that employee. Moreover, if that individual were subsequently referred to work at that project or property for the same or a different subcontractor, the subcontractor the individual was referred to would have justification for refusing to hire that individual.

16. Individuals being barred from a construction site by the owner or general contractor is not a recent development. In *Samuel Crump (Canada) Ltd.*, (1963), 14 L.A.C. 39 (Weatherill) the description of the decision set out in the headnote of that case is, in my view, as applicable in 2010 as it was almost 40 years ago:

> Where the collective agreement is between a sub-contractor and its employees, but the ultimate control over personnel on a particular job site is vested in the general contractor, it cannot be said that the sub-contractor discharges an employee without just cause when the general contractor refuses to permit the employee to continue on the job, and the sub-contractor has no other work available for that employee and there are no seniority provisions in the collective agreement.

The Board in *E.S. Fox*, [1989] OLRB Rep. July 746 adopted that approach when it wrote at page 751:

> Whether or not Crump reflects the present law with respect to where the ultimate control over workers on construction sites is vested, it is generally accepted in the construction industry that the general contractor of a project is responsible to the project's owner for the general security of the project. That would include responsibility for allowing access to the project to persons who have business to conduct or who have work to perform on the project, and for denying access to persons whom the general contractor wants to exclude from doing business or working on the project. In this respect, it is interesting to note that a general contractor who undertakes a project for an owner in Ontario has defined, statutory duties in respect of that project for assuring that "the health and safety of workers on the project is protected" and that "every employer and every worker performing work on the project complies with [The Ontario Health and Safety Act] and the regulations.". The Ontario Health and Safety Act, R.S.O. 1980, c. 321, at s. 13. Those duties seem to reflect the reality of a general contractor's control over its job site.

See also *Mid South Contractors Ltd.*, unreported, Board File No. 3190-03-G, decision dated June 6, 2006, Q.L. cite [2006] OLRD No. 2128; 2006 Can LII 19017 (ON L.R.B.).

17. The applicant points out that line of cases were all situations in which the property owner or general contractor imposing the ban was not bound by a collective agreement with the union seeking to challenge the ban. In this case the applicant submits OPG is, in fact, bound by the EPSCA Agreement. Whether or not it was the actual employer of Mr. Marshall at the time it decided it would bar Mr. Marshall from its sites does not matter since OPG was at all material times bound by the EPSCA Agreement and subject to all of its provisions.

18. OPG relies principally on the Board's decisions in *Ontario Hydro*, [1998] OLRB Rep. Sept./Oct. 849 and *Aecon Industrial*, unreported, Board File No. 2022-05-G, decision dated December 22, 2005, Q.L. cite [2005] OLRD No. 5225; 2005 CanLII 49085 (ON L.R.B.).

19. In *Aecon Industrial* the IBEW sought to challenge Aecon Industrial's failure to hire an individual referred to it to work at the Nanticoke Generating Station. That individual was removed

from that site by OPG before he was able to report to Aecon Industrial because he had been previously barred from that site by OPG. The Board in that case noted OPG was not bound to a collective agreement with the IBEW, but the IBEW sought to challenge OPG's decision to bar that individual through a grievance against EPSCA and Aecon Industrial.

20. The Board dismissed the grievance as against EPSCA. It noted that EPSCA did not bargain a collective agreement with the IBEW on behalf of OPG. Because OPG was not bound by the IBEW collective agreement with EPSCA, I agree with the Board's conclusion at paragraphs 26 and 27 when it wrote:

> 26. Accordingly OPG cannot be held to have violated the grievor's collective agreement rights when it was not in contractual relations with the IBEW. Neither the definition section of the EPSCA collective agreement, nor section 57 of the Act, assists the union in this case.
>
> 27. The position advanced by the union that OPG has an obligation to it and therefore to the grievor as a result of OPG's membership in EPSCA is therefore rejected. The IBEW could only extract rights and obligations from OPG if it had a relationship with it.

21. There is no doubt in the case before me that the applicant and OPG are bound by the EPSCA Agreement. That is, the applicant holds bargaining rights in relation to OPG. The only issue is whether OPG is subject to the EPSCA Agreement when it takes action affecting an individual who is not its employee and when it is acting in its capacity as an owner or licencee operating a nuclear generating station. Thus, the reasoning and the result in *Aecon Industrial*, in my opinion, have no bearing on the issue in this matter.

22. In *Ontario Hydro*, [1998] OLRB Rep. Sept./Oct. 849 the International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 ("Local 95") filed both a grievance referral under section 133 of the Act and an unfair labour practice complaint under section 96 of the Act in respect of Ontario Hydro's refusal to grant security clearance to a member of Local 95 who had been referred to work for Crossby Environmental Ltd. ("Crossby") naming Ontario Hydro and Crossby as responding parties. Crossby was a contractor at Ontario Hydro's Pickering Nuclear Generating Station. The Board dismissed the unfair labour practice complaint against Ontario Hydro and Crossby and listed the grievance referral for hearing. The grievance referral was subsequently adjourned *sine die* without ever being relisted for hearing.

23. Local 95 had initially filed a grievance referral alleging the refusal to hire its member was contrary to the EPSCA Agreement by which both Crossby and Ontario Hydro were bound. Although the underlying issue was the decision by Ontario Hydro to refuse to grant security clearance to the grievor, the collective agreement was silent about granting or refusing security clearance. Crossby in its response to the grievance said its refusal to hire that individual was justified because he had not received security clearance to come on to the work site. Ontario Hydro in its response sought the dismissal of the grievance on the grounds it was not the employer that had refused to hire the grievor. The grievor had never been referred to employment with Ontario Hydro.

24. The Board at page 851 set out the dilemma faced by Local 95 as a result of the position taken by Ontario Hydro:

> Ontario Hydro's response to the referral of grievance caused the Insulators considerable concern. If Ontario Hydro was not a party to the grievance and, if Crossby could defend the grievance as against it by asserting that it was justified in not employing Bauldry as a result of Ontario Hydro's denial of a security clearance, the Insulators would be powerless to force Ontario Hydro to defend the application and impact of its security clearance policy in circumstances where it is applied to individuals referred to work for a subcontractor of Ontario Hydro. It is in an effort to obtain a Board order directing Ontario Hydro to defend the Bauldry grievance that the Insulators filed the unfair labour practice complaint that is the subject of this decision.

As a consequence, Local 95 filed the unfair labour practice complaint in which it alleged a violation of sections 56, 57 and 70 of the Act. Sections 56 and 57 of the Act provide that collective agreements are binding on employers. The Board noted at page 854 that the collective agreement "contains no provision imposing an obligation on Ontario Hydro in respect of substantiating or defending another employer's decision not to hire an individual referred." In the result the Board concluded Ontario Hydro could not be found to have repudiated the collective agreement and therefore could not have violated sections 56 and 57 of the Act.

25. In finding that Ontario Hydro could not have violated section 70 of the Act the Board wrote at page 854-55:

> Clearly, where for reasons relating to its operations a general contractor requires the removal of a subcontractor's employee from a job site, the general contractor is not in violation of section 70 of the Act. In such circumstances, the general contractor's exercise of its power to require a contractor to remove an employee from the job site does not interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union. ... The fact that Ontario Hydro is also bound by the Collective Agreement, is a dominant member of EPSCA and that the scope of the Collective Agreement is defined in terms of work performed on Ontario Hydro property are unique features but do not operate to result in a determination that Ontario Hydro, by refusing to defend the application of its security clearance policy in circumstances where it is not contractually required to do so, has interfered in the representation rights of the Insulators.

26. The issue before the Board in *Ontario Hydro*, *supra*, was whether the refusal by Ontario Hydro to provide the grievor with security clearance was contrary to the Act. The Board held it was not. It is clear the Board's focus in that case was on the obligation of the employer to whom a member of Local 95 was referred to provide reasons for its refusal to hire that individual. Because Ontario Hydro was not the employer to whom the grievor was referred, it was not obliged either by the Act or the collective agreement to explain the basis for its refusal to provide a security clearance.

27. Crossby's reasons for not hiring the grievor were clear. He did not have security clearance to work at the project. While the Board decision noted there was no obligation on Ontario Hydro to justify its decision because the grievor had not been referred to employment with Ontario Hydro, it did not address whether Ontario Hydro's refusal to provide security clearance to the grievor was reviewable through the grievance and arbitration process in the collective agreement by which both it and Crossby were bound.

28. The issue dealt with by the Board in *Ontario Hydro*, *supra*, is not the issue before me in this proceeding. In this case OPG took direct action in respect of Mr. Marshall when it advised the applicant by letter dated March 11, 2009 that it had "reviewed the impact" of Mr. Marshall's conduct on the operation of the Pickering NGS and concluded Mr. Marshall would not be permitted on any OPG site "as a result of his inappropriate conduct on January 31, 2009 in his violation of the Nuclear Safety and Control (NSC) Act."

29. Both OPG and Aecon contend OPG cannot be found to have disciplined, dismissed or terminated Mr. Marshall because he was never an employee of OPG, but was Aecon's employee. In my view, that submission rests on the assumption that discipline can only be imposed on an individual by that individual's employer. While it is obvious a third party that does not have a relationship with an individual has no authority or power to direct or control that person and therefore is in no position to impose discipline on that individual, there are often situations in which a third party to an employment relationship between an employer and employee may well have a good deal of power and authority directly affecting the employee in that relationship. The best example of that type of situation is found on most construction projects where general contractors have the responsibility and obligation to ensure the work carried out by individuals employed or contractors engaged by the subcontractors doing the work on those projects perform their work in accordance with the *Occupational Health And Safety Act*. See also *E.S. Fox*, *supra*.

30. There is no dispute that OPG is a member of EPSCA and is bound by the EPSCA Agreement when it is acting as an employer and directly employs members of the applicant. Contrary to the submission of OPG, both Aecon and OPG are bound by the same collective agreement, the EPSCA Agreement. While OPG was not the employer of the grievor, it clearly was exercising power in respect of the grievor's employment at Pickering NGS. I do not accept that OPG is only subject to the provisions of the EPSCA Agreement when it is "acting in its capacity as an employer". There is nothing in either the Act or in the EPSCA Agreement that permits an entity to claim it is not subject to the EPSCA Agreement when it is wearing its "owner hat" rather than its "employer hat". Section 1.4 of the EPSCA Agreement reinforces that conclusion when it provides that the term "'Employers' shall include individual members of the Association *and* any company, partnership, ... *or* any Employer engaged in the work ...". In my view, the fundamental issue in this case is whether the conduct of an entity bound by the EPSCA Agreement is subject to any of the provisions of the EPSCA Agreement.

31. It is clear the EPSCA Agreement relates, for the most part, to matters involving a direct employment relationship between an employee and an employer. For example, there is no doubt section 8.6 applies to the entities bound by the EPSCA Agreement when they are engaged in hiring members of the applicant. The first paragraph of section 8.6(b) permits the entity employing members of the applicant "to determine competency and qualifications and to reject any new applicant and to discharge and discipline any employee for just and sufficient cause." I accept therefore OPG was not subject to the provisions of section 8.6 in connection with the layoff of Mr. Marshall, and if the applicant referred Mr. Marshall to an employer other than OPG and that employer refused to hire him, only the employer to which Mr. Marshall was referred would be obliged to explain why it did not employ him. To that end, I agree with the analysis in *Ontario Hydro*, [1998] OLRB Rep. Sept./Oct. 849 and accept the EPSCA Agreement does not impose an obligation on OPG to respond to or provide an explanation for the reasons an employer to which a member of the applicant might be referred refused to employ that individual.

32. Aecon submitted article 35 of the EPSCA Agreement is a procedural provision to deal with grievances arising from alleged violations of section 8.6. It is not, according to Aecon, a substantive provision establishing a right to challenge an action that might not be encompassed by section 8.6.

33. Section 35.1 of the EPSCA Agreement establishes the scope of matters that can be grieved through the procedure established by articles 35 and 36. A grievance can only be a dispute about an "interpretation or application of particular clauses" or "about alleged violations" of the EPSCA Agreement. Section 35.7 permits a grievance alleging "unjustified termination, discharge, suspension, or *disciplinary action*" to be initiated at the first step of the grievance procedure. While I accept that section 8.6(b), which expressly provides the employer of an employee may "discharge and discipline any employee for just and sufficient cause", is applicable only to the actual employer of the employee in issue, in my view, section 35.7 does more than simply establish a procedure for dealing with grievances alleging a violation of section 8.6(b). For ease of reference, I again set out section 35.7, which states:

> Alleged unjustified termination, discharge, suspension or disciplinary action may be grieved beginning at First Step.

As the applicant pointed out, unlike section 8.6(b) section 35.7 is not limited in its scope to the direct employer of the employee affected by an "alleged unjustified termination, discharge, suspension or disciplinary action."

34. I am satisfied that when OPG issued its March 11th letter making clear to the applicant Mr. Marshall would no longer be permitted work at any of its sites, whether for OPG or a contractor engaged by OPG, it was, at the very least, imposing some sort of discipline on Mr. Marshall, if not actually effecting the "termination" of his opportunity to be employed at any project or facility under the control of OPG, specifically because he engaged in "inappropriate conduct on January 31, 2009 in his violation of the Nuclear Safety and Control (NSC) Act Section 48(i)." OPG as the entity with the power to determine whether Mr. Marshall can be employed on its sites was in a position to effect "disciplinary action" or a "termination". Because OPG is an "employer" that is a member of EPSCA and is therefore bound by the EPSCA Agreement, even if it is not Mr. Marshall's employer, it is subject to the EPSCA Agreement when it imposed "disciplinary action" or caused the termination of Mr. Marshall's ability to be employed in the bargaining unit encompassed by the EPSCA Agreement.

35. OPG is not liable for the action taken by a contractor bound by the EPSCA Agreement in respect of its own employees. As was made clear by the Board in *Ontario Hydro*, *supra* each employer bound by the EPSCA Agreement is solely responsible for its own conduct in relation to its employees, and OPG has no obligation or liability under the EPSCA Agreement in respect of the action or inaction of a contractor bound by the EPSCA Agreement.

36. In this case, however, it is not Aecon's decision to lay off Mr. Marshall that is in issue. Rather, it was the action taken by OPG in relation to Mr. Marshall, as evidenced by its March 11th letter that is the subject matter of the grievance the applicant seeks to pursue against OPG. When OPG issued the March 11th letter notifying the applicant Mr. Marshall would not be permitted to work at any of its sites, it was acting to prevent Mr. Marshall from being employed in the future by any contractor at its sites. The decision made by OPG was completely independent of the employment

relationship Mr. Marshall had with Aecon and was unrelated to anything done by Aecon in respect of Mr. Marshall's employment. I find OPG's action comes within the scope of section 35.7 of the EPSCA Agreement on the basis that it was either a "termination" or "disciplinary action" or both.

37. In the result, I am satisfied that OPG must establish its decision to bar Mr. Marshall from its sites meets the standard established by section 35.7 of the EPSCA Agreement.

38. The hearing of this matter will continue before this panel of the Board as previously scheduled on April 16, 2010.

3177-09-M Service Employees International Union, Local 1 Canada, Applicant v. **Princess Gardens Retirement Residence**, Responding Party

Discharge for Union Activity – Interim Relief – Practice and Procedure – The SEIU sought an interim order for reinstatement of a probationary employee – A decision had been made by the employee's supervisor that she was not suitable for permanent employment – This decision was not communicated to the employee because she had requested a leave of absence to complete a professional examination – Upon her return, the employee learned of the organizing campaign and began showing her support – She was terminated five days later – SEIU alleged that the discharge effectively halted the union's organizing efforts – Princess Gardens conceded that a campaign to establish bargaining rights was underway and that there was a serious issue to be decided in the pending proceeding – The Board did not find it necessary to determine whether relief was necessary to prevent irreparable harm or to achieve other significant labour relations objectives or whether the balance of harm favoured the granting of the interim relief, because it appeared to the Board that the dismissal was unrelated to the exercise of the employee's rights in support of the union – The Board found that Princess Gardens had a plausible basis for ending the employee's employment and its explanation for the delay in informing her of the dismissal was also plausible – The Board found on a preliminary assessment that the discharge was unrelated to the exercise of rights under the Act by an employee and therefore the Board was prevented from exercising its discretion to reinstate – Application for interim relief dismissed

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Denis Ellickson, Richelle Stewart, Tyler Downey* and *Gabrielle Drapeau* for the applicant; *David W. Francis, Tim Harrold, Heather Young, Renee Nixon, Brendan Sova* and *Andrea Douglas* for the responding party.

DECISION OF THE BOARD: March 2, 2010

Background

1. This is an application for an interim order of reinstatement under section 98 of the *Labour Relations Act, 1995*, S.O. 1995, c.1 as amended ("the Act"). There is a pending unfair labour practice complaint (Board File No. 3165-09-U) which will be dealt with by the Board at a later date. Both

matters are concerned with the termination of Gabrielle Drapeau on January 19, 2010, which the applicant alleges was motivated by Ms. Drapeau's support for the union.

2. This matter proceeded by way of consultation on February 19, 2010. I informed the parties that this was a summary process designed to elicit further information upon which the Board would be able to answer the questions posed by the provisions of section 98. I further advised the parties that the inquiry was not for the purpose of making findings of fact whether or not an unfair labour practice has been committed. That is left to the panel of the Board assigned to the hearing of the unfair labour practice complaint.

3. A number of declarations were filed in this matter. Ms. Drapeau and Tyler Downey, an organizer employed by the union, made declarations on behalf of the applicant. Declarations on behalf of the employer were made by Renee Nixon, Director of Care; Brendan Sova, Assistant Director of Care; Heather Young, Executive Director; and Andrea Douglas, Administrative Assistant.

4. I asked questions of all the declarants, save Ms. Douglas, and each of the parties' counsel was given an opportunity to pose questions arising from mine. In arriving at my conclusions in this decision, I have taken into account the pleadings of the parties and the documents submitted in support of the pleadings, the individual declarations filed with the application and the response, the information provided by the declarants in the course of the consultation, and the respective oral legal arguments.

The Factual Context

5. The responding party ("the employer") operates a retirement home in Peterborough. It employs about 100 employees or slightly fewer. Ms. Drapeau was hired and began working there on July 28, 2009 as a part-time Unregulated Care Provider pending receipt of her licence as a Registered Practical Nurse ("RPN"). It was anticipated she would work as an RPN once she obtained her licence following successful completion of her examination by the College of Nurses. A condition of her employment was that she serve a six-month probationary period, ending on or about January 28, 2010.

6. Renee Nixon, Director of Care and Brendan Sova, Assistant Director of Care shared in the supervision of Ms. Drapeau. Mr. Sova met with Ms. Drapeau on December 8, 2009 to review some practice concerns regarding the accuracy of her documentation and to stress the importance of reporting wound care status. According to Ms. Drapeau, the problem was that she and other health care co-workers on her team were not taking a consistent approach on the reporting of wound care status. In any event, Mr. Sova documented his meeting with Ms. Drapeau in a "note to file".

7. On December 28, 2009, Ms. Drapeau did not give a resident of the home a prescribed dose of Benadryl as scheduled. Accordingly, Mr. Sova met with Ms. Drapeau on December 29, 2009 and completed a Medication Incident Report, documenting the omission, which was signed by Mr. Sova, Ms. Drapeau and the nurse who reported the error. The Medication Incident Report indicates that neither the resident's physician nor the resident's family were notified of the error. In her declaration Ms. Drapeau stated that the resident in question received Benadryl several times a day to relieve against itchiness, and that the missed dose could have been administered on the following

shift. She did not appear to understand why she was spoken to about the error, and pointed out that the resident was not negatively affected by the omission.

8. Either at the December 29, 2009 meeting or not long thereafter, in early January, Ms. Drapeau inquired of Mr. Sova when she would be receiving her performance evaluation which she understood had to be undertaken near the completion of an employee's probationary period. She claims in her declaration that Mr. Sova said: "Don't worry about it", and that she took this comment to be a reassurance that her performance was more than satisfactory, and further, that she was well on her way to passing her probationary period. In his declaration, Mr. Sova says that he gave a more expansive answer to Ms. Drapeau's question: "Don't worry, we will get to it. Renee [Nixon] will take care of it." Mr. Sova explained in his declaration that the performance evaluation of Ms. Drapeau was Ms. Nixon's responsibility. He further explained at the consultation that he has not yet carried out any performance evaluations of staff.

9. In her declaration, Ms. Nixon said she began having concerns about Ms. Drapeau around Christmas 2009. She doubted Ms. Drapeau's ability to assume the charge of the home overnight, something she would have to do once she obtained her RPN designation and began working night shifts. One reason for this doubt appears to have been grounded in the fact that Ms. Drapeau sometimes called Ms. Nixon on weekends seeking guidance on her duties. For her part, Ms. Drapeau informed the Board that she had been encouraged to ask questions as a recent graduate, and that she only called Ms. Nixon at home on five occasions.

10. Ms. Nixon claims she also was concerned that Ms. Drapeau frequently stayed late after the end of her shift, which suggested to Ms. Nixon that she had difficulties completing all her tasks in the course of the shift. In her declaration, Ms. Drapeau states that she occasionally stayed after her shift to complete her assignments, but that she also observed other staff doing the same thing. The Time Transaction Report submitted with Ms. Nixon's declaration, outlining all of Ms. Drapeau's hours of work and shift start/end times, shows that, out of a total of 95 shifts worked by her in the course of her employment, she stayed beyond her scheduled shift on 43 occasions.

11. Finally, Ms. Nixon had reservations about Ms. Drapeau as a result of the events of December 8 and 28, previously described. I note, however, that there was no information to suggest that Ms. Nixon ever expressed any of her apprehension directly to Ms. Drapeau, nor does it appear that anyone told Ms. Drapeau that she ought not to have to ask questions of the Director of Care or to stay after shift to complete her work.

12. Ms. Nixon and Ms. Young agree in their declarations that Ms. Nixon discussed her concerns about Ms. Drapeau with Ms. Young in late December, and that in early January 2010 they reached a decision together that Ms. Drapeau should not be retained beyond her probationary period, which as I have indicated would have ended on January 28, 2010. However, because Ms. Drapeau had by then asked for and been granted a leave of absence from January 7 until January 13, 2010 to prepare for and write her College of Nurses examination, they decided not to communicate their decision to Ms. Drapeau until after her return to work. Ms. Nixon explained to me during the consultation that the reason for waiting was to avoid distracting Ms. Drapeau at a time when she needed to focus on the examination.

13. Although not relied upon as forming any basis for the decision to terminate Ms. Drapeau, Ms. Nixon mentions in her declaration (and it appears to be undisputed) that she asked Ms. Drapeau for, but did not receive, a copy of her temporary nursing certificate and a police background clearance required by the employer of all new employees.

14. Ms. Drapeau's declaration gives a more positive view of her performance. She claims that she received several compliments on her work and was told she was doing a good job. She does not, however, identify the source of those compliments. She does not say, for example, that members of management said she was doing a good job. She claims that there was only one complaint about her work, and that was in respect of the Benadryl error. She does not refer to the earlier meeting with Mr. Sova in which he expressed concern about documenting and reporting wound deterioration.

15. On January 4, 2010, the union's organizer, Tyler Downey, commenced an organizing drive with respect to the employer's employees. He, with the assistance of unnamed others (but not Ms. Drapeau, who knew nothing about the campaign until January 14, 2010) made contact with employees by visiting them at, or making telephone calls to, their residences. Mr. Downey estimated in the course of the consultation that there were about 20 to 25 such home visits, and approximately 10 to 15 phone calls made in the period from January 4 until Ms. Drapeau's termination on January 19, 2010, resulting in the establishment of a "network" of employee communication and the signing up of 6 individuals to membership in the applicant.

16. As I have indicated, Ms. Drapeau appears to have had no knowledge of the union's organizing drive until her return to work on Thursday, January 14, 2010. In the course of her shift, she learned of, and was invited by a co-worker to, a meeting of the Princess Gardens Employee Association ("the Association")[1] for the purpose of discussing the applicant's organizing drive. Ms. Drapeau disclosed to the co-worker, who turned out to be an Association representative, that her mother worked for the SEIU. Following the completion of her shift, Ms. Drapeau and about 40 other employees (but no one from management) attended the meeting. Association representatives spoke out against the organizing drive. Ms. Drapeau asked questions and pointed out that she could obtain information about the SEIU for those employees in the meeting who appeared not to know much about the organization. It came out that Ms. Drapeau's mother played a role in the SEIU. Word got back to Ms. Nixon and Ms. Young that Ms. Drapeau and others had expressed support for or curiosity about the union.

17. After the meeting, Ms. Drapeau got in touch with Mr. Downey. They agreed to arrange a meeting of employees for Thursday, January 21, 2010.

18. Ms. Drapeau did not work the following Friday, January 15, 2010, but did work both the following Saturday and Sunday. She says in her declaration that she spoke to as many as 15 employees and told them of the upcoming meeting she had arranged with Mr. Downey. She also spoke to several Association representatives and expressed her pro-union views.

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[1] The employer and the Association are parties to a document entitled, "Association Agreement", which among other things purports to recognize the Association as the exclusive agent of certain employees of the employer, and which contemplates the deduction of dues, the constitution of an employee negotiating committee and issue resolution committee, and the referral of unresolved issues to binding arbitration, including complaints by post-probationary employees that discipline or discharge was without just cause.

19. In her declaration, Ms. Drapeau stated that she worked part of her shift on Monday, January 18, 2010 before being terminated later in the day. In his declaration, Mr. Downey stated that he received a call from Ms. Drapeau on Monday, January 18, 2010 in which she informed him of her termination. At the consultation, the union conceded that the declarations were in error concerning the date of termination. Ms. Drapeau was not scheduled to work on January 18, 2010. She worked part of a shift on January 19, 2010 and then was dismissed.

20. The dismissal interview took place at around 10:00 a.m., three hours into Ms. Drapeau's five hour shift. It was conducted by Ms. Nixon in her office, accompanied by Ms. Young and a representative of the Association. Both Ms. Nixon and Ms. Young state in their declarations that January 19, 2010 was the first day following Ms. Drapeau's return to work on January 14, 2010 that they could meet to carry out the dismissal, although neither explained what prevented them from meeting earlier with Ms. Drapeau, say on January 14, 2010 when she returned from her brief leave of absence. Ms. Drapeau claims Ms. Nixon told her in the dismissal interview that she was not fit for the job, had a problem with time management and needed more experience. Ms. Drapeau was then escorted off the premises by the Association representative who privately confided to her that she could do little to assist Ms. Drapeau because the employer had a documented case against her. Ms. Nixon's and Ms. Young's accounts of the meeting are somewhat more detailed, but they confirm the essence of the points covered by Ms. Drapeau in her version. They agree that Ms. Nixon expressed the view that Ms. Drapeau was not ready to take on the responsibility of being in charge of the building. They agree that the Association representative escorted Ms. Drapeau off site, but they say that this is standard practice in the home.

21. At some point, either during the dismissal meeting or some time afterward, the employer provided Ms. Drapeau with a letter of termination. It reads:

> Dear Gabrielle,
>
> This letter is to inform you that your services as an Unregulated Care Provider at Princess Gardens are no longer required, effective immediately.
>
> As you are aware, during the probationary period the performance of new employees is monitored closely to determine if they are a good fit with the organization – and also if the organization is a good fit for them. This monitoring includes an assessment of such capabilities and characteristics as job skills, attitude, reliability, leadership and so on.
>
> We have determined that you have not met our probationary standards and as such your record of employment and your final paycheque for all hours owing and [sic] will be forwarded to you at the next regularly scheduled pay period.
>
> We wish you well in your future endeavours.
>
> Best Regards,
>
> "Heather Young"
> Heather Young
> Executive Director

22. Within about one hour after her termination, Ms. Drapeau called Andrea Douglas, an Administrative Assistant at the home, to report a number of tasks that had not been completed in the course of the three hours of her five hour shift that day. Among other things, Ms. Drapeau disclosed to Ms. Douglas that she had prematurely signed earlier in the shift for medication to be given to a resident at 12:00 p.m., and that he should be given the medication. She also reported that she had administered the medication of another resident before the prescribed time of 12:00 p.m. Both Ms. Nixon and Ms. Young say in their declarations that such "adjustments" in the recording or administering of medication are unacceptable.

23. After Ms. Drapeau's termination, the union continued to campaign. It stepped up considerably the rate of contact with employees. The union secured only two more new members, one of whom had been on a leave of absence and did not know what had transpired in the workplace. One employee who was approached by the union cited Ms. Drapeau's termination in declining to get involved with the union. The meeting scheduled for January 21, 2010 yielded only one attendee from among a group of fifteen employees who had committed to be present.

Analysis and Conclusions

24. The provisions of section 98 of the Act relevant to this matter are:

> **98.** (1) On application in a pending proceeding, the Board may,
>
> (a) make interim orders concerning procedural matters on such terms as it considers appropriate;
>
> (b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and
>
> (c) subject to subsections (2) and (3), make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer.
>
> (2) The Board may exercise its power under clause (1)(b) or (c) only if the Board determines that all of the following conditions are met:
>
> 1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.
>
> 2. There is a serious issue to be decided in the pending proceeding.
>
> 3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.

> 4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.
>
> (3) The Board shall not exercise its powers under clause (1)(b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.
>
> (4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant.
>
> ...

25. The union contends that all the elements of section 98 are satisfied. The employer, on the other hand, while it concedes that the first two conditions in subsection 98(2) are established, and admits it was aware that the union had approached some employees prior to Ms. Drapeau's termination, contends that the interim relief is not necessary to prevent irreparable harm and that the balance of harm does not favour the granting of the interim relief. Moreover, the employer submits that even if the Board were to find that all the elements of subsection 98(2) are satisfied, the termination of Ms. Drapeau appears unrelated to the exercise of rights under the Act, pursuant to subsection 98(3).

26. The scheme of section 98 is such that, even if all the subsection 98(2) elements necessary to the exercise of the Board's discretion under subsection 98(1) are satisfied (and the first two elements of subsection 98(2) are conceded by the employer), nevertheless subsection 98(3) prohibits the exercise of that discretion if the impugned employer conduct appears to the Board to be unrelated to the exercise of employee rights under the Act[2]. Given my view on the applicability of subsection 98(3) to the information in this proceeding, it is not necessary to determine whether, under paragraph 3 of subsection 98(2), Ms. Drapeau's reinstatement is necessary to prevent irreparable harm or achieve other significant labour relations objectives. Nor need I determine the balance of harm factor in paragraph 4 of subsection 98(2). That is because it appears to me that Ms. Drapeau's dismissal was unrelated to the exercise of her rights in support of the union[3].

27. Chief among the reasons for my conclusion is that the employer had a plausible basis for ending Ms. Drapeau's employment, and carried out the termination near the end of Ms. Drapeau's probationary period. The probationary period is an integral part of the hiring process. It enables an employer to assess a new hire and to determine if he or she is suitable to be employed in the organization on an ongoing basis. There were aspects of Ms. Drapeau's work described in Ms. Nixon's declaration that could give rise to a reasonable concern that she was not suitable for permanent employment. While she certainly ought not to be condemned for staying past her shift to

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[2] *UPS Supply Chain Solutions Inc.*, [2005] OLRB Rep. September/October 904 (September 14, 2005), paragraph 36.

[3] As the Board noted at paragraph 67 in *Patrolman Security Services Inc.*, [2005] OLRB Rep. September/October 818 (October 6, 2005), an inquiry under subsection 98(3) "is directed at determining not whether there is a causal relationship as a question of fact, but whether it merely "looks" or "appears" to be that way on a preliminary review or scan of the information before the Board. In this sense, the inquiry is like a preliminary assessment of the quality or robustness of the evidence likely to be heard and tested in the pending application."

complete her assignments or regularly asking questions, I can see why Ms. Nixon might have started noticing the frequency of this behaviour. I can also see why she might have come to hold an even stronger concern about Ms. Drapeau following the December 28, 2009 Benadryl incident. Failing to give prescribed medication to a resident of a retirement home is a serious matter. Ms. Drapeau downplays the consequences of the error in her declaration. She does not appear to accept fully her accountability for the omission. This attitude strengthens Ms. Nixon's claim that she had reservations about Ms. Drapeau's leadership abilities.

28. The union argued that the delay in terminating Ms. Drapeau following the medication omission is suspicious, because if the error was indeed such a serious lapse, the employer ought to have minimized all risk by removing Ms. Drapeau from the workplace, rather than let her work with residents for a further seven shifts. I think this fails to take into account all the circumstances of the error. It was a serious matter to be sure, but the Medication Incident Report reveals that there is a range of severity in such matters. Some errors are grave enough to warrant notification of the resident's physician and family, and the Medication Incident Report contains an option to do so. Apparently, Ms. Drapeau's omission did not fall into the category warranting such notification, because the Medication Incident Report indicates that the physician and the family were not informed. This could explain why the employer allowed Ms. Drapeau to continue working for several more shifts before terminating her employment. Nor is it particularly odd that Ms. Nixon and Ms. Young decided to wait until after Ms. Drapeau's leave of absence to inform her of their decision. Ms. Nixon's explanation, that they did not wish to distract Ms. Drapeau from the preparations for her examination, is entirely plausible on its face in the circumstances.

29. If there is any "gap" in the employer's version of events, it concerns the lack of particulars regarding why Ms. Nixon and Ms. Young could not meet earlier than Tuesday, January 19, 2010 to conduct Ms. Drapeau's termination. However, the only other opportunity to have done so, other than on the previous weekend, would have been on Thursday, January 14, 2010, because Ms. Drapeau returned to work that day, but did not work the following Friday or Monday. Again, I do not find this lack of explanation particularly concerning because there does not appear to have been a compellingly urgent performance-related reason to remove Ms. Drapeau from the workplace sooner than later in the probationary period. One could suggest, of course, that Ms. Drapeau was not terminated on January 14, 2010 because the employer did not have knowledge of her support for the union until at least after she completed her shift that day and after the Employee Association meeting later that afternoon, but that within days after learning of that support, and because of it, the employer hatched a plan to dismiss her in the hopes of deflating the organizing campaign. On the other hand, it may be that the work schedules of Ms. Nixon and Ms. Young did not permit of an earlier opportunity to carry out the termination on January 19, 2010, which they apparently planned long before they knew she was a union supporter. It simply is not possible to prefer one scenario over the other without the benefit of further oral and/or documentary evidence. The parties will get that chance in the hearing of the pending unfair labour practice complaint.

30. The employer's version of events is not necessarily watertight, but on a preliminary assessment, it is unmarred by obvious inconsistencies or contradictions that might cause one to suspect a connection between the dismissal and an unlawful purpose. It appears to me, therefore, that Ms. Drapeau's dismissal was unrelated to the exercise of rights under the Act by an employee, and consequently I am prevented by subsection 98(3) of the Act from exercising the Board's discretion to reinstate pursuant to subsection 98(2)(b).

31. The application for interim relief is dismissed. The Registrar is directed to schedule the hearing of the unfair labour practice complaint as soon as possible.

3317-07-R; 3318-07-U United Brotherhood of Carpenters and Joiners of America, Local 2486, Applicant v. **Southend Drywall & Acoustics Ltd.**, Responding Party

Certification Where Act Contravened – Construction Industry – Interference with Trade Unions – Remedies – Unfair Labour Practice – The Carpenters commenced an organizing campaign by having an employee of Southend distribute cards – The owner's brother, who was the employee's supervisor, openly expressed his dislike of unions, and burned another employee's union card at the workplace, in front of several other employees – The employer argued that the discharge of the employee who began distributing cards was for excessive absences, and for drinking during lunch – The Board found that the termination of the employee effectively put an end to the organizing campaign – The Board preferred the discharged employee's evidence over that of the employer's witnesses – Although his attendance may have been at issue, it was not the reason for the discharge – Other employees were reprimanded for drinking at lunch; the inside organizer was terminated – The employer did nothing to distance himself from his brother's anti-union behaviour – The Board was satisfied that a representation vote would not reflect the true wishes of employees – Certificate granted

BEFORE: *Marilyn Silverman*, Vice-Chair, and Board Members *B. Roberts* and *R. Baxter*.

APPEARANCES: *Melissa Kronick, Gabe Parent* and *Scott Rudolf* appearing on behalf of the applicant, *Damien Buntsma* and *Jamie Weirmeir* appearing on behalf of the responding party.

DECISION OF THE BOARD: March 17, 2010

1. These two applications were filed on January 25, 2008.

2. One is an application for certification filed under section 8 of the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The other is filed under section 96 of the Act and alleges violations of sections 70, 72 and 76 of the Act by the responding party, Southend Drywall & Acoustics Inc. (the "employer" or the "company" or "Southend").

3. The membership evidence filed with the application does not represent evidence on behalf of 40% or more of employees in the bargaining unit. The applicant ("the union" or "the Carpenters") asserts that its failure to obtain additional membership evidence is a result of the alleged violations. The applicant seeks certification under section 11 of the Act.

4. The standard ICI carpenters bargaining unit is:

> all carpenters and carpenters' apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters'

> apprentices in the employ of the responding party in all other sectors of the construction industry within a radius of 57 kilometres (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman.

5. The applicant's case is that the inside union organizer, Scott Rudolf was terminated when he began a card signing campaign at Southend. The union asserts that the owner and principal of Southend, Jamie Weirmeir, learned of Mr. Rudolf's efforts and fired him, thus ending the drive. The applicant says that other employees learned of the termination and were no longer willing to have any involvement with the union. The union says that the effect of Mr. Rudolf's termination was that employees feared for their jobs if they expressed interest in the union and, as a consequence, no order short of certification under section 11 of the Act would remedy the violation.

6. The responding party says that Mr. Rudolf was terminated for just cause. The company relies on the fact that Mr. Rudolf had an attendance problem, which they had warned him about in the past and, as a culminating incident, he was found by the employer drinking beer at lunch on a work day. Further, the employer says that there was no organizing campaign during the relevant time. Accordingly, the employer asserts there was no violation of the Act and no remedy should be awarded. In the alternative, the employer says that remedial certification under section 11 of the Act is an extraordinary remedy and not one that should be granted on the facts of this case.

7. The Board heard evidence from six witnesses. They were Jamie Weirmeir, the owner of Southend; Ted Weirmeir, a drywall mechanic who is also Jamie's brother; Al Gingras, a supervisor; Scott Rudolf, the union organizer; Marcel Lalonde, a drywaller and former employee of Southend; and Gabe Parent, the outside organizer and union representative for the applicant.

Facts

8. Southend is a construction company operating in Sudbury. It is owned and operated solely by Jamie Weirmeir, who has run the company for six years. Southend employs mainly carpenters. At the time relevant to this determination, Southend was engaged in performing carpentry work on a project at Laurentian University in Sudbury.

9. Mr. Gingras was the supervisor at that site, running the day to day operations. Jamie Weirmeir says that his brother Ted Weirmeir works on the tools and is not supervisory. Ted Weirmeir says that he does not schedule, direct work, hire, fire or discipline. He is an experienced drywall mechanic. As a highly skilled worker, Ted Weirmeir has a high rate of pay. He has no financial interest in the company. Ted Weirmeir had been a supervisor years before but was no longer one at the time relevant to this application. Ted Weirmeir made clear in his evidence and conduct that he does not like unions nor does he like Mr. Parent, the applicant's business manager.

10. Mr. Rudolf was hired by Jamie Weirmeir on August 7, 2007 as an apprentice carpenter to be Ted Weirmeir's helper. Mr. Rudolf knew Ted Weirmeir as the two men had worked together previously for another employer. Mr. Rudolf came to the Southend job site in the summer of 2007 and asked Ted Weirmeir for a job. Ted Weirmeir referred Mr. Rudolf to Jamie Weirmeir. Jamie Weirmeir knew at the time of hiring that Mr. Rudolf was a member of the Carpenters. Jamie Weirmeir says that fact did not concern him nor did it deter him generally from hiring workers.

11. During the period of his employment, Mr. Rudolf missed a number of shifts. He missed work for 4 ½ days in September, ½ a day in October 2007 and 3 days in January 2008. There was never a consistent reason given for his absences. Jamie Weirmeir warned Mr. Rudolf about these absences. Mr. Gingras, in charge of the site, was frustrated with Mr. Rudolf's absenteeism. Mr. Gingras told Mr. Rudolf about this dissatisfaction, and in December 2007 Mr. Gingras and Ted Weirmeir had a discussion about terminating Mr. Rudolf. They decided not to do so because of the upcoming Christmas holiday. Mr. Rudolf was warned by Jamie Weirmeir in December 2007 about the missed shifts. Ted Weirmeir said that Mr. Rudolf was absent often. Ted Weirmeir knew one of the reasons for the absence was that Mr. Rudolf suffered from migraines. There were no written warnings or notifications given to Mr. Rudolf.

12. Mr. Rudolf knew Mr. Parent. In September 2007, Mr. Rudolf told Mr. Parent he was not interested in organizing for the union at Southend. As a consequence, no organizing efforts occurred from August 2007 until January 2008.

13. In January 2008, the events giving rise to these applications began. On Monday, January 7, Mr. Rudolf called in that he would be absent that day. He said he was out late at an NHL hockey game the night before in Ottawa and had a long drive home in a snow storm. In cross examination, the responding party produced evidence that there was no NHL hockey game in Ottawa on that Sunday night. Although Mr. Rudolf gave evidence the game was the night before his phone call to work, he conceded that he made a mistake and the game could have been Saturday. In any event, he was in Ottawa for a hockey game that weekend and headed home Sunday in a snow storm.

14. On the following day, Tuesday, January 8, Mr. Rudolf attended at work and was told by Mr. Gingras to take the week off and to call Jamie Weirmeir the following week. Mr. Gingras was displeased about yet another absence, and wanted to terminate Mr. Rudolf at that time. Jamie Weirmeir was away that week so Mr. Gingras told Mr. Rudolf that Jamie Weirmeir would contact him. As a result, Mr. Rudolf did not work for the remainder of that week. Mr. Rudolf says he called Jamie Weirmeir on Sunday, January 13 regarding a return to work. According to Mr. Rudolf, Jamie Weirmeir said he would discuss a return with Mr. Gingras or Ted Weirmeir and call Mr. Rudolf back. Mr. Rudolf said Jamie Weirmeir called back and told Mr. Rudolf to report to work on Monday, January 14. Jamie Weirmeir denied these conversations.

15. On Monday, January 14, Mr. Rudolf attended at the site. There is no dispute that Mr. Rudolf worked Monday to Friday that week (January 14 to January 18). Jamie Weirmeir was not at the worksite until the Wednesday of that week and, when he attended at the site, Mr. Rudolf was working. Jamie Weirmeir said that he was confused as to why Mr. Rudolf was at work. Both Jamie Weirmeir and Mr. Gingras said they had not told him to work. Mr. Gingras said that he assumed that Mr. Rudolf was re-hired, but he did not call Jamie Weirmeir, when Mr. Rudolf returned, to verify if that was the case. When Jamie Weirmeir did come to the site he and Mr. Gingras discussed what occurred and determined that neither had hired Mr. Rudolf back. Jamie Weirmeir said that in that discussion the two men decided to let Mr. Rudolf work out the week and then let him go. Mr. Gingras' version is slightly different. He says that they decided to re-evaluate at the end of the week. In the end, neither Mr. Gingras nor Jamie Weirmeir said anything to Mr. Rudolf about his return to work. They let him continue working.

16. On Thursday, January 17 after work, Mr. Rudolf met with Gabe Parent of the union. Mr. Parent made notes of that meeting. They discussed some dissatisfaction that Southend employees had expressed to Mr. Rudolf about holiday pay. Mr. Rudolf said he was then interested in organizing Southend and he took union cards to bring to work the next day. Later that day Mr. Parent called Mr. Gingras to gauge his interest, since he had been a member of the union previously. Mr. Gingras acknowledged this overture by Mr. Parent to join the union. However, Mr. Gingras denies knowledge of any organizing taking place prior to Mr. Rudolf's termination.

17. On Friday, January 18, Mr. Rudolf approached some workers. One of them, Mr. Lalonde, took a card and then asked for another one later in the day. He said that he wanted to show it to someone else. Mr. Lalonde said that discussions had been ongoing that week about the union. Mr. Lalonde asked Mr. Rudolf if there would be a union meeting because he had questions. Mr. Lalonde also said he showed Mr. Gingras the card. According to Mr. Lalonde, Mr. Gingras said he already knew Mr. Rudolf was distributing cards. Mr. Gingras denies this.

18. That Friday, January 18, three individuals, Mr. Rudolf, Ted Weirmeir and Mr. Gingras went to a local sports bar for lunch. Their lunch extended to about an hour, although the allotted lunch break is ½ hour. Each of the men had beer with lunch. Jamie Weirmeir came into the bar and although he did not eat with the three men, he saw them. He too had beer with his lunch.

19. Jamie Weirmeir says there is a policy regarding alcohol consumption at work. The employer produced the company's health and safety policy manual which provides that a worker will not be permitted to work while under the influence of a substance, and may be disciplined. Jamie Weirmeir said he is not aware his workers would have beer at lunch and return to work as he tells everyone never to drink on the job.

20. Jamie Weirmeir said that he was upset about the men having a beer at lunch but did not want to make a scene in the bar. He said he could not tell if they were under the influence of alcohol though they did not seem to be. When asked about what he did to satisfy himself that the men returning to the site were not under the influence, Jamie Weirmeir said he returned to his office and thought about the matter. He thought about calling Mr. Gingras at the site and telling him and the men not to return to work, but decided not to do that.

21. Mr. Gingras, Mr. Rudolf and Ted Weirmeir returned to work that afternoon, January 18, and finished the day. Jamie Weirmeir did not attend at the site that day. Nothing was said to Mr. Rudolf when he left work that Friday.

22. Mr. Rudolf went to the union office after work and reported that he had handed out cards to Mr. Lalonde and had spoken to another worker after work. That employee had a phone conversation with Mr. Parent later in the day and agreed to have another conversation with Mr. Parent on Sunday. Mr. Parent's assessment from these events and contacts was that the organizing drive was progressing.

23. After leaving the union office, Mr. Rudolf received a series of phone calls. Mr. Rudolf, on the advice of his girlfriend who is a union steward at a different workplace, took notes of those calls. Mr. Rudolf's notes and evidence are that at 4:40 p.m. Ted Weirmeir called and asked about Mr. Rudolf handing out cards at the end of the shift. Mr. Rudolf wrote in his notes that he denied this to

Ted Weirmeir. Ted Weirmeir said that Mr. Rudolf should call Jamie Weirmeir who wants an explanation. Ted Weirmeir expressed disbelief that Mr. Rudolf would hand out union cards on "my job". Mr. Rudolf said that Ted Weirmeir was angry. Mr. Rudolf again denied that he was handing out cards and said he would call Jamie Weirmeir.

24. Ted Weirmeir presents a different version. Ted Weirmeir admits two calls with Mr. Rudolf. He says that in the first call he told Mr. Rudolf that he had received a verbal reprimand from Jamie Weirmeir about the beer at lunch. He said that after that call Jamie Weirmeir called Ted Weirmeir to tell him he had terminated Mr. Rudolf. Ted Weirmeir says that in that conversation he was told by Jamie Weirmeir that Mr. Rudolf asked if he was fired because he was "carding people". According to Ted Weirmeir this was the first occasion upon which he learned of Mr. Rudolf's union activity and it was after the termination. Ted Weirmeir was told by Jamie Weirmeir that he had responded to Mr. Rudolf by saying that the termination was for missed shifts and having a beer at work and not for union activity. At that point, Ted Weirmeir made a second call to Mr. Rudolf in which Ted Weirmeir called Mr. Rudolf names for handing out union cards.

25. Jamie Weirmeir's evidence is that he called Mr. Rudolf after work and told him not to return to work because of too many missed shifts. Mr. Gingras said that the termination was Jamie Weirmeir's decision and that he was not consulted on it. Jamie Weirmeir says he first called Ted Weirmeir and Mr. Gingras to reprimand them for drinking during working hours. Jamie Weirmeir said that the first time he learnt that union cards were being distributed at the work site was in that phone call when Mr. Rudolf asked if his termination was because of the cards. Jamie Weirmeir responded that it was because of the missed shifts. Jamie Weirmeir concedes that he did not mention the beer at lunch during this call.

26. The witnesses are agreed that at 5:00 p.m. Ted Weirmeir called Mr. Rudolf again to tell him that he should pick up his tools the next day.

27. Jamie Weirmeir asserts that Mr. Rudolf was laid off for excessive absence and the culminating incident of drinking at lunch hour. As regards the beer at lunch, Jamie Weirmeir testified that Ted Weirmeir and Mr. Gingras were given verbal warnings after work on that Friday that they could not drink during working hours and that conduct should not be repeated.

28. Mr. Rudolf attended at the job site the next day, Saturday, January 19, to pick up his tools. Mr. Rudolf asked the union organizers to accompany him as he was concerned about dealing with Ted Weirmeir. They waited in the car outside the work site while Mr. Rudolf had his cell phone on in his pocket.

29. Ted Weirmeir says that three employees, in addition to Mr. Gingras, were on site that day: Gary Larabie, Rheal Richer and someone identified as "Edward". Ted Weirmeir said he was upset with Mr. Rudolf for "taking my job away". Ted Weirmeir told Mr. Rudolf that he would never work for a non-union company again and would never work in this town again. Mr. Gingras said that he learned that Mr. Rudolf was fired on the Saturday from Mr. Richer and he also heard about the altercation between Ted Weirmeir and Mr. Rudolf from Mr. Richer. Mr. Rudolf said that Mr. Larabie asked him on Saturday why he was handing out union cards.

30. On Monday, January 21, Mr. Lalonde attended work with a union card. Ted Weirmeir took it from him and burned it. Ted Weirmeir says that neither Mr. Gingras nor Jamie Weirmeir were there but there were trades people and other Southend employees present. Mr. Lalonde learned that morning that Mr. Rudolf had been fired. Mr. Lalonde said that no one from the union ever tried to talk to him after Mr. Rudolf was fired and that there was no follow up to the drive.

31. Mr. Parent said that once Mr. Rudolf was out of the workplace, the organizing drive was over. Mr. Parent said he tried to get on the work site but could not. He tried to call the worker he had spoken to on the previous Friday afternoon but was unable to reach him. That worker had never called on Sunday as he said he would. Mr. Parent attributes these events to the fact that Mr. Rudolf was fired, following which Mr. Parent "couldn't get close to anybody". Mr. Parent said he talked to an insulator working for Southend who was not a member of the applicant and who was subsequently removed from the site. Once Mr. Rudolf no longer had access to the work place, there were no other individuals on site who were connected with the workers.

32. Mr. Rudolf was issued a Record of Employment. A follow up letter to that ROE explaining the reason for termination, signed by Jamie Weirmeir, recorded that Mr. Rudolf was terminated because he did not report to work for four days in December and that he was told on the last of those times that he would be terminated if he continued to miss work. Further, that letter says that Mr. Rudolf was consuming alcohol during working hours and recording an extra ½ hour time for that day.

33. Jamie Weirmeir denies being aware of a union organizing campaign prior to the termination of Mr. Rudolf. He also says that he was not aware that Mr. Rudolf was a union organizer.

Submissions

34. The company's argument is twofold: first that Mr. Rudolf's termination was not motivated by anti-union animus and second that even if it were, which is denied, remedial certification is not an appropriate remedy.

35. The responding party argues that Mr. Rudolf was terminated for legitimate reasons and that there was no anti-union motive. It asserts further that the union seeks extraordinary relief under section 11 and that the union is attempting to use the lawful termination of Mr. Rudolf to mask the fact that it did not engage in a legitimate organizing campaign. The employer says this is an example of a large international union attempting to obtain certification without the requisite support.

36. The employer relies on the factors enunciated in *DeVilbiss (Canada) Limited* [1975] OLRB Rep. September 678; *McDonnell-Roland Limousine Service Ltd. (c.o.b. Airline Limousine)* [2007] OLRD No. 1404 (March 30, 2007); and *London Free Press* [2003] OLRD No. 3202 (September 19, 2003) as to when the Board will find section 96 violations.

37. The responding party asserts there was no pattern of anti-union activity by this employer. Jamie Weirmeir knew that some of his men, including Mr. Rudolf, were union members and yet he agreed to their hire. The employer says that to suggest anti-union animus by Jamie Weirmeir who knowingly hires union members is not possible. The company says that the union did not offer credible evidence to suggest that Southend has ever demonstrated itself to be anti-union.

38. The only evidence of anti-union sentiment came from Ted Weirmeir whom the employer asserts is an employee and not a person who speaks for the company. He is entitled to his independent opinion. *FJS Holdings (c.o.b. as My Cousin's Restaurant)* [1994] OLRB Rep. November 1572 and *National News Company Limited* [1990] OLRB Rep. August 870 (August 16, 1990).

39. In terms of credibility the employer says that the evidence of its witnesses should be preferred. The employer submits that Mr. Rudolf's evidence is tainted by the evidence that the hockey game was on Sunday night when it was not. The employer suggests that this testimony was an attempt to deceive the Board and should operate to discredit all Mr. Rudolf's testimony.

40. As regards Southend's knowledge of union activity and the employees' involvement in that activity, the employer submits that it had no knowledge of that activity during Mr. Rudolf's employment. Jamie Weirmeir maintains that he only learned of Mr. Rudolf's involvement when Mr. Rudolf raised it himself on the termination phone call and asked if that was the reason he was being terminated.

41. The employer suggests that despite being terminated by Mr. Gingras after the weekend in Ottawa, Mr. Rudolf returned to work. The employer let him stay but at the end of the week Jamie Weirmeir considered all that occurred, the missed shifts and the beer incident, and decided he had had enough and terminated Mr. Rudolf. Although ill-timed, timing alone is not sufficient and the union has no proof that the company knew that Mr. Rudolf was organizing. The employer contends that the decision to terminate Mr. Rudolf was for clear and justifiable reasons.

42. The employer contends Mr. Lalonde was forthcoming but on many issues he was uncertain. The employer says that the Board should not accept what Mr. Lalonde said about Mr. Gingras' admissions that he knew Mr. Rudolf was trying to get cards signed. The company says we should prefer Mr. Gingras' evidence and conclude that no one acting on behalf of the employer knew of Mr. Rudolf's activity prior to his termination.

43. In summary then on the unfair labour practice portion of the case, the company says that it is clear on the evidence that Mr. Rudolf was terminated for just cause. Accordingly, no unfair labour practices were committed and the section 96 application should be dismissed.

44. Next, the company addresses the request for section 11 certification. It asserts that even if Mr. Rudolf's termination was as a consequence of his union activity, the Legislature never intended section 11 to be engaged in the circumstance of this case. Southend asserts that the true wishes of employees were already known and they did not want the union. Given the extraordinary nature of remedial certification, the company says that the union has failed to adduce sufficient evidence that a lesser remedy or no remedy would not be appropriate under the circumstances.

45. The parties relied on similar case law *1443760 Ontario Inc. (c.o.b. Swing Stage Equipment Rentals Ottawa)*, [2007] OLRB Rep. May/June 485 (June 15, 2007); *L & L Painting and Decorating Ltd.*, [2007] OLRB Rep. September/October 887 (October 15, 2007); *K.D. Clair Construction Ltd.*, [2008] OLRB Rep. January/February 60 (February 26, 2008); and *Lecompte Electric Inc.*, [2008] OLRB Rep. March/April 234 (April 15, 2008).

46. In *Swing Stage* the Board found that the termination of a union organizer was a decisive act giving rise to the entitlement to remedial certification. Southend distinguishes that case in that Mr. Rudolf's termination was not done openly and the employer here, did not know of the organizing drive.

47. The employer relies on *L & L Painting and Decorating Ltd.* for the proposition that a discharge is not itself sufficient to automatically trigger section 11 certification.

48. In *Lecompte* the Board declined to order section 11 certification where it was not persuaded that the union engaged in "grassroots campaigning" and instead relied on the use of "salts" in the workplace. The Board found on those facts that the union had had no contact with over 60% of the workforce and had acknowledged that its organizing drive, which spanned two to three months, was effectively at a standstill.

49. The employer notes from *K.D. Clair* and *Lecompte*, the Board will not invoke section 11 certification as an alternate to broad based organizing efforts. Where a union chooses to do nothing, they will fail to meet the onus entitling it to relief.

50. In that regard, the employer relies on the fact that there was only one valid union card signed and it was filed by the inside organizer. The union talked to two other employees but there was little interest. The employer says that the union is not entitled to section 11 certification because it is evident that the true wishes of employees are apparent by the fact that there was no success in garnering employee interest prior to Mr. Rudolf's termination.

51. The employer argues that the union did nothing other than make a few phone calls, after Mr. Rudolf's termination, to ensure that the campaign was in fact over.

52. There were submissions from the employer referencing the Hansard debates and committee submissions preceding the passage of what is currently the remedial certification provision of section 11 of the Act. The employer submits that the intent of the Legislature as gleaned from those documents is relevant to these proceedings.

53. In summary then, the employer submits that the union is not entitled to any remedy under section 11. When asked by the Board about alternative remedies in the event we find violations of section 96, the employer leaves any remedy in the hands of the Board.

54. The union contends that the discharge of Mr. Rudolf violated sections 70, 72 and 76 of the Act. The applicant highlights five factors in its approach to the case: the burden of proof in section 96(5), inferential reasoning, credibility, timing and circumstances. The union argues it is not able to demonstrate 40% or more of employees appear to be members of the bargaining unit as a result of the violations. The union asserts that no remedy short of certification would be sufficient to remedy the breach.

55. The applicant argues that this case is about the discharge of the key organizer in a small, fluctuating construction workplace. Mr. Rudolf lost his job immediately after he handed out union cards. Ted Weirmeir is the owner's brother. He threatened that Mr. Rudolf will never work again in Sudbury for a non-union company. That statement was yelled out on the site on the Saturday after Mr.

Rudolf was fired. Then on Monday, Ted Weirmeir burned a union card. The union says the company's message is clear that there is a direct connection between job loss and union activity. In the face of that, employees cannot be expected to join or vote for the union without fear of job security. Having established that, the union contends that no remedy short of certification will suffice.

56. The union asserts Mr. Rudolf's discharge was tainted by anti-union animus. Even if attendance was part of the reason for the termination (which the union does not accept), the union submits that the predominant reason was Mr. Rudolf's union activity.

57. In this assertion the union relies on credibility and timing. The union says it is clear that the employer had no intention of firing or disciplining anyone for the beer at lunch until it became aware that Mr. Rudolf was handing out union cards. The union admits it does not know who told Jamie Weirmeir of Mr. Rudolf's activity, but suggests it was likely Mr. Gingras or Ted Weirmeir. It says the evidence is clear that Mr. Gingras knew of the cards being distributed even though he denied it. Both his conversation with Mr. Lalonde and with Mr. Parent were clear evidence that Mr. Gingras knew of the union activity.

58. Given that the company allowed Mr. Rudolf to return to work in the week ending with his discharge, the union asserts that there was no basis to terminate him for attendance problems. He had not been absent again in that week. The only event that changed was the distribution of the union cards. The union discounts completely the beer incident given Jamie Weirmeir's lack of action when he saw the men drinking at lunch.

59. The union suggests that the night of the hockey game in Ottawa is irrelevant to the credibility of Mr. Rudolf. Whatever occurred that weekend, when Mr. Rudolf showed up at work, no one sent him home. In all the circumstances, the union says it is more probable than not that Mr. Rudolf was fired for handing out union cards.

60. The union then addresses the application of section 11 relief. It relies on the decision in *Swing Stage* and disputes that there need be a pattern of anti-union activity or threats to job security in order to trigger that relief.

61. The applicant distinguishes *K.D. Clair Construction Ltd., supra.* In that case the employer reinstated the union organizers and invited the union to communicate with employees.

62. The union says that it made efforts to contact people after the termination. In light of the fact that the drive was in its nascent stages and the inside organizer had been terminated, there was very little else the union could do.

63. The union relies also on *Carlos Barbosa Concrete Ltd.*, [2008] OLRB Rep. May/June 334 (May 26, 2008) and *Riverstone Masonry Inc.*, [2009] OLRB Rep. January/February 120 (January 26, 2009) where the Board granted section 11 relief in a climate of fear of job loss.

64. The union says that the only remedy to counteract this violation is certification under section 11 of the Act. Southend is a small employer in the construction industry and no amount of access or postings will change the message that union activity will result in termination.

65. The union asks the Board to conclude that sections 70, 72 and 76 of the Act were violated when Mr. Rudolf was terminated for union activity. It seeks certification under section 11 of the Act and the reinstatement of Mr. Rudolf with compensation.

Statutory Framework

66. The relevant statutory provisions are section 11, section 70, 72 and 76 of the Act:

> **11.** (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,
>
> (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
>
> (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.
>
> (2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,
>
> (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
>
> (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or
>
> (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.
>
> (3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).
>
> (4) On an application made under this section, the Board may consider,
>
> (a) the results of a previous representation vote; and
>
> (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.
>
> ...
>
> **70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to

deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

...

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

(a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

(b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or

(c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

...

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

Analysis

67. We deal first with the issue of credibility. In areas, the evidence of Mr. Rudolf contradicted that of the employer witnesses. The responding party asks the Board to discount all of Mr. Rudolf's testimony on the basis of the evidence about the hockey game being on a Sunday night when in fact it was on Saturday. We are not prepared to do so for these reasons. Mr. Rudolf admitted the error, the error had nothing to do with the material facts of this case and it was not a fact that assisted the union's case one way or another. There is no dispute that Mr. Rudolf called in absent on Monday January 7, 2008 and nothing arose as to the reasons he did so at that time. In short, other than the fact that he was wrong in that recollection (and admitted it), there was no reason that error mattered to either party or had any substantive impact on the case. He was not so much being dishonest as he was mistaken.

68. Where Mr. Rudolf's version is inconsistent with that of the company witnesses, we prefer Mr. Rudolf's version. Each of the employer witnesses had varying versions of what occurred both when Mr. Rudolf came back to work on Monday, January 14 and again when he was terminated on Friday, January 18. Also, Jamie Weirmeir said he did not mention the beer at lunch during the

termination phone call yet Ted Weirmeir said that Jamie Weirmeir told him when he spoke to Ted Weirmeir that afternoon that the missed shifts and the beer were the reasons for the termination. Also, it is not likely that no one authorized Mr. Rudolf's return to work on January 14 and yet he returned and was allowed to continue to work for four days. Jamie Weirmeir said he was upset about seeing the men drinking beer at lunch yet he said nothing at that time. He allowed them to return to work, issued two of them verbal warnings of which there is no written record, and fired Mr. Rudolf.

69. We turn next to whether the company discharged Mr. Rudolf for union activity. In order to assess that we consider the reasons advanced by Southend for the termination.

70. Jamie Weirmeir said that Mr. Rudolf was terminated for two reasons. One was his poor attendance and the other was the beer he had at lunch in violation of the company policy. We begin by assessing the validity of those reasons as disclosed by the evidence.

71. Mr. Rudolf did have attendance issues. Mr. Gingras was frustrated with Mr. Rudolf's absences and would likely have been willing to terminate him in December 2007. The continuation of that attendance problem was highlighted after Mr. Rudolf called in absent on Monday, January 7, 2008 when he returned from Ottawa. That is why Mr. Gingras was not willing to put him back to work on the Tuesday, but rather told Mr. Rudolf to speak to Jamie Weirmeir upon his return. We do not doubt that the week off Mr. Rudolf was given was in response to the fact that his attendance was not satisfactory and that the option was open to Jamie Weirmeir to discharge Mr. Rudolf at that time. However, Jamie Weirmeir did not choose to terminate Mr. Rudolf. He allowed him to go back to work.

72. What we conclude is that the company decided that Mr. Rudolf's attendance was not, as at January 14, a reason for termination. Given that Mr. Rudolf did attend work on Monday, January 14, that he worked that week (until Friday) without incident and that both Mr. Gingras and Jamie Weirmeir knew he was working, we cannot accept that the company did not condone his absence after the Ottawa incident. We prefer Mr. Rudolf's version of what occurred. It is highly unlikely that Mr. Rudolf would return to work on Monday morning and be allowed to work had Jamie Weirmeir not authorized that return. It is also unlikely that Mr. Gingras did not know Mr. Rudolf was coming to work. What is likely is that Mr. Rudolf called Jamie Weirmeir who in turn called either Ted Weirmeir or Mr. Gingras and discussed Mr. Rudolf's return. It was then on Jamie Weirmeir's direction that Mr. Rudolf returned to work on Monday, January 14. That is why Mr. Gingras did nothing when Mr. Rudolf returned. Another reason we are clear that Mr. Rudolf did not just show up at work unannounced is that the week before when Mr. Gingras told him to wait and speak to Jamie Weirmeir before returning, Mr. Rudolf did so. There is no reason he would show up after that unless he was told to. It seems unlikely that Mr. Rudolf could attend at the workplace and work for a number of days without the company having tacitly or expressly allowed it. The conclusion from these events is that even if Jamie Weirmeir and Mr. Gingras were unhappy with Mr. Rudolf's attendance issues, they were not sufficiently unhappy to fire him at that time.

73. We deal next with that last week of work. Mr. Rudolf was not absent or late from Monday, January 14 until his termination on Friday, January 18. Given that his earlier attendance issues were not sufficient for the employer to terminate him when he was called back to work on January 14 and the fact that he had no further absences that week, it unlikely that his attendance problems were the only reason for his termination. We accept that they may have been part of the

reason. Anti-union animus need only taint an employer's motivation for reprisal against an employee. It need not be the sole or primary motivation. But the onus is on the employer to establish that its actions were not motivated at all by anti-union sentiment – (see *Pop Shoppe (Toronto) Ltd.*, [1976] OLRB Rep. June 299 and *Barrie Examiner*, [1975] OLRB Rep. October 745).

74. Next, we deal with the beer at lunch. Both Jamie Weirmeir and Mr. Rudolf said the beer was not mentioned in the termination phone call. Since Jamie Weirmeir said that the beer was a factor, coupled with the attendance problems, then surely he would have mentioned it in the termination phone call. On his evidence, Jamie Weirmeir called the other two men to verbally discipline them for the beer at lunch and yet did not mention it to Mr. Rudolf when he terminated him.

75. Ted Weirmeir and Mr. Gingras were given only verbal warnings. That is significantly disparate discipline for Mr. Rudolf, particularly since Mr. Gingras was the supervisor and Mr. Rudolf was likely to follow his lead as to what was acceptable behaviour.

76. Finally, if the beer at lunch was a reason to terminate Mr. Rudolf, Jamie Weirmeir would not have let the three men return and remain at work that afternoon. He would either have attended at the site himself or contacted Mr. Gingras. The beer incident occurred at lunch on Friday and yet Jamie Weirmeir waited until after the end of the day to terminate Mr. Rudolf. Further, Jamie Weirmeir said he had decided earlier in the week that Mr. Rudolf would be let go but Jamie Weirmeir did not instruct Mr. Gingras to do so before the men left work that day.

77. A feature of the employer's case is the assertion that there was no organizing activity going on in the week ending with Mr. Rudolf's termination and to the extent there was no company officials were aware of it.

78. Southend emphasizes that there were no union meetings held nor any union information distributed. The union counters that the drive was in the early stages and that it was halted by Mr. Rudolf's termination. We accept this evidence. There was an organizing drive in process at Southend at the time of Mr. Rudolf's termination.

79. In the Board's experience organizing drives take on different characteristics depending on the nature of the industry and the size and composition of the workforce. This was a small workforce (12 employees on Schedule "A" to the response). It is common that an organizing drive in the context of the construction industry occurs with employees talking about the union, taking cards to sign or consider signing, asking for more information or agreeing to meet the outside organizers for information. At that point the union has no clear indication of whether or not it will succeed but that is the start of an organizing drive. Employees who are left to make their decision and express their true wishes decide to join or not. The intervention of the employer at this stage with threats to job security interferes with that free choice.

80. We find that there was an organizing drive at Southend before Mr. Rudolf was terminated. It does not assist the employer that it hires union members. All that evidence bears out is that union members are not of concern to the company provided they do not seek to unionize the company.

81. Jamie Weirmeir said he did not know of Mr. Rudolf's activity until he disclosed it in the termination phone call. We are not persuaded that Mr. Rudolf would raise the issue of his union organizing unsolicited to Jamie Weirmeir in response to being terminated. It fits too with the sequence of phone calls Mr. Rudolf received. Jamie Weirmeir must have had discussions with Ted Weirmeir or someone else and learned of Mr. Rudolf's organizing efforts. Given that we do not accept that either the attendance or the beer at lunch were the reasons, or certainly not the full reasons, for the termination, all that remains is Mr. Rudolf's organizing activity. We are persuaded that was the primary reason for the termination.

82. Therefore, the employer's termination of Mr. Rudolf for union activity was in contravention of sections 70, 72 and 76 of the Act.

83. We turn next to the remedy for those violations.

84. First, the reinstatement of Mr. Rudolf is in order since he was discharged contrary to the Act. As to any compensation, that is referred to the parties to resolve, failing which it can be referred to the Board for determination.

85. We now give consideration to section 11 relief and whether a remedy or group of remedies short of certification would be sufficient to counter the effects of the contraventions.

86. We accept that section 11 certification is extraordinary relief. It requires the Board to make a determination in the absence of a clear expression of employee wishes.

87. In arriving at this decision, we have considered the facts and arguments as they relate to the statute and the Board jurisprudence which has interpreted the provisions of section 11 of the Act. That jurisprudence reflects labour relations considerations. In the result, we have relied upon that jurisprudence and the Board's labour relations focus to determine this case, rather than legislative debates introduced by the responding party, which preceded the introduction of the statutory provision found in section 11 of the Act.

88. The employer argues there was no interest in the union at the time Mr. Rudolf was terminated. That point was addressed in *Swing Stage* at paragraph 56:

> The employer suggests that the campaign was effectively over, the employees expressed their views and there was no support for the union. It says that the campaign was dead before the termination of Mr. McCarthy. I find that it is of no value to speculate on whether the union would have obtained the required support were it not for the company's contraventions. The employer did not allow the drive to take its course and did not allow the employees to exercise a free choice. It cut off that choice by putting job security at issue.

89. In *Swing Stage* the actions of the employer were found to serve two purposes: to end the union's access to employees and to send the message that support meant job loss.

90. In this case, Mr. Rudolf was gauging interest for the union. Some employees had been approached by him and at least one had a conversation with the outside organizer. What employees

saw next was that Southend terminated Mr. Rudolf. The events of both the Saturday and the Monday following the termination made clear to employees what would happen if they showed interest in the union – they would lose their jobs.

91. This is where the status of Ted Weirmeir presents a significant issue. While we agree with the employer that at all times material to these applications he was not a manager as contemplated under section 1(3) (b) of the Act, Ted Weirmeir is the brother of the owner of the employer. Given Ted Weirmeir's close family connection with the owner, in the context of the key union organizer being fired shortly before, burning a union card publicly in the presence of employees clearly conveyed to them that the company would not tolerate the opportunity for its employees to decide for themselves whether they would want a trade union to represent them or not. In addition, Ted Weirmeir told Mr. Rudolf he would never work again in Sudbury; this occurred in front of other employees. Although not done by the employer itself, the fact that it was done openly during working hours on the employer's premises necessarily suggested tacit approval of this conduct by the employer.

92. We have considered the taking of a representation vote with ancillary and declaratory relief including opportunities for the union to communicate with employees. The Board is asked to fashion a remedy that will enable employees to express their true wishes at the ballot box in the context where the union's inside organizer has been terminated for distributing cards and discussing the union, and where he has been told that he will never work for a non-union company in Sudbury. In addition, the employees have seen a union card being burned on the employer's premises after that termination. The employer did nothing to distance itself from these actions or to reassure its employees regarding their job security. There is nothing the Board could do to counteract the very obvious message that joining the union will mean you will lose your job and potentially any job in the community. We have no confidence that a vote and various ancillary relief would counterbalance the very damaging impact of the employer's conduct in and around the termination of Mr. Rudolf. As the Board stated in *Carlos Barbosa*:

> 56. ...A representation vote in these circumstances would be meaningless given that those threats will follow the employees into the voting booth in any subsequent representation vote.

93. Unlike the authorities referred to us where the Board declined to order section 11 certification, this is not a case where the message was unknown to the other employees.

94. In *L & L Painting*, the Board concluded that the subject employees did not know of the termination during any relevant time and would not have been affected by the fact that it occurred. The Board held that the "pattern of organizing" was not affected by the termination and declined to order section 11 certification. In the facts of the matter before us, Mr. Rudolf's termination was known to the other employees as was the burning of the union card.

95. *K.D. Clair Construction* presents a unique fact situation. The employer conceded that the termination of two individuals was at least in part for their involvement in union activity. The responding party offered the employees a return to employment. In denying the applicant section 11 certification the Board relied on the fact that the union had not attempted to obtain further membership support from employees when the discharges had not come to the attention of the bargaining unit and before the application for certification was filed. The Board concluded that the

union had not established that the unfair labour practice resulted in the inability of the union to obtain 40% support.

96. The discharge of an employee who organizes for, or shows interest in, the trade union is an effective way to end an organizing campaign. It signals to employees that those who support the union will lose their jobs. It is clear that the support would then end. If employees are to express their true wishes they must do so without the shadow of job loss. Otherwise it is their reaction to the threat of losing their job and not their true wishes that is being measured.

97. We are satisfied, from a review of the jurisprudence, and from an assessment of the remedies available to us under section 11 of the Act, that a representation vote would not reflect the true wishes of employees, even if accompanied by ancillary remedies that try to assuage the impact of the employer's unfair labour practices. The true wishes of employees cannot now be obtained through a representation vote and neither that nor any remedy short of certification would be sufficient to counter the effects of the contravention.

98. For these reasons, the union's application fore certification pursuant to section 11 of the Act is granted.

99. A certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the United Brotherhood of Carpenters and Joiners of America and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, in respect of all carpenters and carpenters' apprentices in the employ of Southend Drywall & Acoustics Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

100. Further, a certificate will issue to the applicant trade union in respect of all carpenters and carpenters' apprentices in the employ of Southend Drywall & Acoustics Ltd. in all sectors of the construction industry within a radius of 57 kilometres (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

101. The responding party is directed to forthwith post the attached Notice to Employees in a location or locations where they are most likely to come to the attention of those employees who may be affected by it. These copies are to remain posted for a period of 30 days from the date of this decision.

APPENDIX IV

The Labour Relations Act, 1995
NOTICE TO EMPLOYEES
Posted by order of the Ontario Labour Relations Board

This notice has been posted in compliance with a direction of the Board, issued after a proceeding in which both the company and the union participated.

The Ontario Labour Relations Board found that Southend Drywall & Acoustics Ltd. violated the *Labour Relations Act, 1995*, by terminating the employment of an inside union organizer contrary to the Act. The Ontario Labour Relations Board further concluded that, as a result of the violation, the true wishes of the employees were not likely to be ascertained in a representation vote, and it certified the union as bargaining agent for the group of employees described as:

> all carpenters and carpenters' apprentices in the employ of Southend Drywall & Acoustics Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of the responding party in all other sectors of the construction industry within a radius of 57 kilometres (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman.

Employees in Ontario have these rights which are protected by law:

- To organize themselves;
- To form, join and participate in the lawful activities of a trade union;
- To act together for collective bargaining;
- To refuse to do any and all of these things.

This is an official notice of the Board and must not be removed or defaced.
This notice must remain posted for 30 consecutive days.
DATED this 17th day of March, 2010.

0745-09-R; 0754-09-R; 0765-09-R; 0782-09-R Universal Workers Union, LIUNA, Local 183, Applicant v. **Telecon Canada Ltd.,** Promark-Telecon Inc., Responding Parties v. The Underground Locators Association, Intervenor; The Underground Locators Association, Applicant v. Promark-Telecon Inc., Responding Party v. Universal Workers Union, Labourers International Union of North America Local 183, Intervenor; Universal Workers Union, Labourers International Union of North America, Local 183, Applicant v. Promark-Telecon Inc., Responding Party

Bargaining Unit – Certification – Construction Industry – Local 183 applied for certification under the construction industry provisions of the Act asserting that the locating work performed in an excavation project was construction industry work – Local 183 argued that the work was performed on a construction site and that it was necessary and integral to the work on those sites – The company argued that the purpose of the work was safety, not construction; that its contract was not with the constructor; and that the work was performed before construction began, which therefore could not be a part of the construction industry – The Board found that the work in question was "necessary and integral" to the construction activity as there was a clear connection between the work required to be performed by the locators and the work of the excavation that requires the locating work be undertaken – Therefore, it was construction industry work – Matter continues

BEFORE: *Marilyn Silverman*, Vice-Chair.

APPEARANCES: *Robert Gibson, Doug Serroul* and *Garth Allen* for the Universal Workers Union, Labourers International Union of North America, Local 183; *Paul Wearing* and *John Cartier* for Promark-Telecon Inc.

DECISION OF THE BOARD: April 14, 2010

1. These are four related applications. Three are applications for certification and one is a request to have two entities declared a single employer for the purpose of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").

2. On June 9, 2009 the Universal Workers Union, Labourers International Union of North America, Local 183 ("Local 183") applied for certification under section 128.1 of the construction industry provisions of the Act. That application bears Board file number 0782-09-R.

3. The only issue for determination in this decision is whether or not the work performed by Promark-Telecon Inc. ("Promark" or the "company") is work that falls within the construction industry provisions of the Act.

4. Telecon Canada Ltd. and the Underground Locators Association are parties to some of these proceedings. However, they chose not to participate in the instant determination as this threshold determination involves only Promark and Local 183.

5. Promark is in the business of locating underground utility services. The work involves locating and marking underground facilities such as gas and phone lines so as to ensure there is no damage to those utilities during excavation.

6. Local 183 seeks the following bargaining unit:

> all construction labourers in the employ of the responding party in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton, and Alnwick in the County of Northumberland; the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton and Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

7. The Act defines construction industry in section 1(1) as:

> "the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site".

The Facts

8. In the course of this proceeding, I heard evidence from four witnesses. Mike Eytenaele, a locator who works for Promark; Garth Allen, a Local 183 organizer; John Forgie, a utility consultant, and John Cartier, the general manager of one of the Promark regions. At the end of the day, the material facts and descriptions of how the work was done were not in dispute. The dispute is about the characterization of that work.

9. Mr. Eytenaele described the work he has been doing for the company for the last eight years as a locator or "damage prevention technician" in the Peterborough area. He locates underground utilities. He has training from Enbridge Gas to locate natural gas. He trains other locators. He also does investigations in the event of damage.

10. Mr. Cartier oversees the operation of utility locating for Promark. As part of that function he handles employee training. At the time relevant to this application, Promark had between 26 and 28 individuals working as locators.

11. Mr. Eytenaele and Mr. Cartier described the "Ontario One Call" system. The legislation (described below) regarding locating utilities requires constructors who will be excavating to ensure utilities are located and identified prior to the onset of excavation. This objective is best achieved through a central call centre. As a result, Ontario One Call was established. It is a private company that receives locate requests and notifies the utilities where the excavation is to be done. Most utilities are members. Ontario One Call directs the constructor who is planning an excavation to the utility. The utility then retains a locate company, such as Promark, to perform the locate in the area where the

constructor proposes to perform the excavation. The utility owner pays for the locate. Mr. Cartier describes Ontario One Call as a non-profit organization made up of utilities to promote one number in order to facilitate the ability to obtain a locate.

12. The locator, such as Mr. Eytenaele, receives a locate request or locate ticket generated by Ontario One Call at the request of the contractor. It is the written record of the locate and excavation. The locate request sets out what is being located (i.e. water, telephone, gas), the date, the company and contact person who requested the locate, where it is and for what type of excavation the locate is required. A map of the area is attached to the form.

13. The locator attends the site where the locate is to be done and checks the records. A radio detection machine sends a magnetic field and a receiver picks up the magnetic field and traces a signal. Then the locator either paints spots or lines to indicate the location of a utility line or pipe; colour coded for the particular utility. The locator fills out various parts of the locate form with information relevant to the contractors who requested the locate. The locator hands the sheet in to the Promark office and on occasion may give it to someone designated at the site as well.

14. The type of jobs for which locates are done range from work for residential subdivisions, backyard swimming pool installations, repair of existing structures, repair or installation of water or sewer mains, road construction, landscaping, fencing and decking and soil sampling. The work is done for any kind of installation. Certain locating work performed by Promark is not done for construction, such as preconstruction, design, soil sampling, tree planting, work for easements or homeowners individually. Local 183 concedes that soil sampling is not construction work.

15. A locate request is only valid for 30 days from its issue. Usually the locates are done within days of being requested. If the locate is not done within the 30 day time frame, a new locate request is required. The contractor cannot begin work until the locate is done.

16. Mr. Eytenaele says he is often on site and co-ordinates and communicates with the supervisor of the construction crews. Sometimes the construction crews are on site, depending upon the nature of the project. He needs to stay ahead of the crews as they work and continue to locate for them. If changes are required or damage occurs, he deals with that.

17. Mr. Forgie is experienced in this area and worked for Consumers Gas as manager of damage mitigation for many years before becoming a self employed utility consultant. He explained the purpose of the locate is to protect the underground structure. For that reason, the locates and job of the locators is legislated.

18. All locates do not require locate reports. For example if the work is shallow or if there is no underground facility in the area. Promark is not involved in work where locates are not required.

19. As may be expected this work is highly regulated. A significant feature of Local 183's case is that the work is regulated under the construction industry provisions of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O-1 as amended (the "OHSA").

20. Ontario Regulation 213/91 (the "Regulation") to the OHSA governs construction projects. Part of the Regulation outlines requirements and procedures to locate utilities prior to excavation. That is:

228 (1) Before an excavation is begun,

(a) the employer excavating shall ensure that all gas, electrical and other services in and near the area to be excavated are located and marked;

(b) the employer and worker locating and marking the services described in clause (a) shall ensure that they are accurately located and marked; and

(c) if a service may pose a hazard, the service shall be shut off and disconnected. O. Reg. 443/09, s. 6.

(2) If a service may pose a hazard and it cannot be shut off or disconnected, the owner of the service shall be requested to supervise the uncovering of the service during the excavation. O. Reg. 443/09, s. 6.

(3) Pipes, conduits and cables for gas, electrical and other services in an excavation shall be supported to prevent their failure or breakage. O. Reg. 443/09, s. 6.

21. The *Technical Standards and Safety Act* (the "TSSA") imposes a similar requirement in section 9 of Ontario Regulation 210/01, governing oil and gas pipeline systems:

9 (1) No person shall dig, bore, trench, grade, excavate or break ground with mechanical equipment or explosives without first ascertaining from the licence holder the location of any pipeline that may be interfered with. O. Reg. 210/01, s. 9 (1).

(2) The licence holder shall provide as accurate information as possible on the location of any pipeline within a reasonable time in all the circumstances. O. Reg. 210/01, s. 9 (2).

22. Finally, the Electrical Distribution Safety Regulation (Ontario Regulation 22/04) to the *Electricity Act, 1998*, provides similar requirements as it relates to underground electricity lines. Section 10(3) and (4) of that regulation provides that:

10 (3) Before digging, boring, trenching, grading, excavating or breaking ground with tools, mechanical equipment or explosives, a contractor, owner or occupant of land, buildings or premises shall, in the interests of safety, ascertain from the distributor responsible for the distribution of electricity to the land, building or premises the location of any underground distribution line that may be interfered with in the course of such activities. O. Reg. 22/04, s. 10 (3).

(4) The distributor shall provide reasonable information with respect to the location of its underground distribution lines and associated plant within a reasonable time. O. Reg. 22/04, s. 10 (4).

Submissions

23. Local 183 asserts that the work described is clearly work in the construction industry. It relies on a two part test: that the work is performed on a construction site and that it is necessary and integral to the work on those sites. (*646849 Ontario Ltd. (c.o.b. Magic Maid Cleaning Service)* [2006] O.L.R.D. No. 2723 (June 14, 2006); *Ellis-Don Limited* [1993] OLRB Rep. July 589; *Aramark Canada Facilities Services Limited* [2009] OLRB Rep. September/October 662 (September 23, 2009); and *A-1 Hydrant Services Ltd.* [2005] OLRB Rep. May/June 350 (June 29, 2005)).

24. As regards the latter requirement, Local 183 reviews the specifics of the various legislative requirements and says that the excavations legally require that the locates occur and as such, the locates are by definition necessary and integral. With the exception of soil sampling, Local 183 says that all the work is performed on construction sites. As noted above, Local 183 concedes that soil sampling is not construction.

25. Local 183 calculates that 50% of the work is for large sewer and water main contractors, 15-20% new low rise subdivisions, 15-20% private homebuilders (pools, fences, landscaping, and lighting). The remainder is road construction and installation of new services.

26. Local 183 contends that there is interaction between the construction employees and the locators and that often the construction employees are on site working close to the locators. The construction work cannot begin, and is dependent upon the locating work. Although the utilities retain and pay the locators, the work is for the benefit of the contractors.

27. Local 183 also relies on a decision of the Board in *QX Ltd.* [2009] O.L.R.D. No. 1301 in which a certificate was granted to a company that does the same work as Promark. This issue was not in dispute in that case, although Local 183 relies on the case in respect of some reference describing the construction trades that previously did locating work.

28. In summary, Local 183 asks the Board to find that this application is properly made under the construction industry provisions of the Act and to issue certificates accordingly.

29. The company advances three arguments in support of its position that the locating work is not work in the construction industry. Its position is that the work performed is integral to the operation of the underground utility and not integral to the operation of the construction contractor. First, the "purchasers" of the locates are the utilities and not the contractors. The locate report is the provision of information. Second, the purpose of the work is damage prevention which is a safety purpose and not a construction purpose. Third, the locates are performed before construction begins and, on that temporal basis, should not be considered part of the construction work.

30. The company says there are two types of cases that deal with this issue; the cleaning company cases (*Magic Maid* and *Aramark*) and the material delivery cases (*Ellis Don Corporation* [2004] OLRB Rep. January/February 56 (January 19, 2004), and *Cedarhurst Paving Co. Limited* [1964] CarswellOnt 367).

31. On the first argument, Promark says that a locate report is akin to delivering materials in that it is information delivered or supplied to the end user. There is no contractual obligation between

Promark and the recipients of the locate reports; the contractors. Promark's contractual arrangement is with the underground facility. The company relies heavily on this distinction and says that it is supported by the *Aramark* analysis. The crux of the distinction is that the company, which is the object of the certification application, must be in contractual relations with a company in the construction industry in order for the Board to find that the work of the target company is work in the construction industry.

32. On the second point, the company contends that the essence of this work is the provision of locate information to the underground utility to ensure its safe operation. It is a product for that customer, the utility, and integral to the utility industry. There is no connection with the contractors and therefore, none with the construction industry.

33. On this point, Local 183 responds that the purpose of the locate is to ensure safe excavation as well as to protect the underground infrastructure.

34. The company says that locates are not integral to Promark's business. There is no "site" in the construction sense of that concept since the locators' work is, of necessity, done before any excavation occurs. Locating is never a consequence of construction work but must always precede the construction work. In Promark's view there can be no construction activity before excavation. On this point the company notes the *Atcost Soil Drilling Inc.* [1990] OLRB Rep. January 1 decision where the Board held that drilling to obtain rock and soil samples was not work in the construction industry. In concluding that the work at issue was not properly brought under the construction industry provisions of the Act, the Board, at paragraphs 6 (in part) and 14 described the characterization of this work:

> 6. Soil and rock samples are generally taken to enable an engineering firm to ascertain the appropriateness of the area in question for the future construction of a building, road, bridge hydro tower and/or to determine the type of foundation which will be required.
>
> ...
>
> 14. The work performed by the respondent is generally not done in connection with an ongoing construction project. Presumably at times construction projects tentatively planned for a particular area will not be built, at least at that location, because of the results of soil, rock or hydrogeology tests. If construction does eventually go ahead, it is possible that the results of the tests might determine what type of construction will take place. Actual construction work might not occur for up to 10 years after a sample has been taken. In our view, the work performed by the respondent takes place well prior to the construction process and the respondent cannot reasonably be viewed as being engaged in a business in the construction industry.

35. Promark asks the Board to dismiss the construction industry application on the basis that it was not properly filed under the construction industry provisions of the Act.

Analysis and Decision

36. I address the analysis in terms of the three reasons advanced by the company for its position that the work at issue is not work in the construction industry. First, the purpose of the work

is safety not construction; second, Promark's contract is with the underground utility and not with the constructor and third the timing of when the work is done in relation to the construction process.

37. In terms of purpose, the locates are done for an integrated purpose. They are for the benefit of construction contractors so that they can begin excavation and are necessary for the utilities to prevent damage to their underground facility. The locators work with the site foremen or supervisors and coordinate activities where necessary.

38. It is significant that a reading of the OHSA integrates the locating work with the construction work. Specifically, the relevant construction project regulation requires "the employer responsible for the excavation" - that is the contractor - to "request the owner of the service" - that is the utility owner - to "locate and mark the service". For the purpose of this case, that is the work done by Promark. The integration of the function with the construction work as a whole is evident from this legislative description.

39. The Board considers "how integrated the activities under scrutiny are to the construction work that goes on at the site" (see paragraph 24 of *Star Concrete Pumping Inc.* [2009] OLRB Rep. March/April 291). Where the work in question is "necessary and integral" to the construction activity, the Board has generally found it to be work in the construction industry.

40. The analysis begins with *Cedarhurst* ("...an integral and necessary part of the business"), followed in *Ellis-Don 1993* and *Magic Maid*. That was followed in *Star Concrete* where the Board found that operating concrete pumping trucks within a construction site was integrated with the construction work and therefore work in the construction industry. This decision was made in the face of the well established proposition that delivery of concrete to a job site is not work in the construction industry (*Ellis Don 2004*).

41. The case of *Ellis-Don 1993* was decided in the context of a grievance. It involved cleaning work in preparation for the occupancy of an office. The work included, *inter alia*, cleaning windows, vacuuming, sweeping, cleaning washrooms, and dusting. The Board found that work was included in the definition of construction. It was not prepared to make a distinction between clean up work performed by construction labourers and that same work performed by and through a contracted cleaning company. At paragraph 34 the Board stated its purpose in arriving at that conclusion:

> 34 We prefer to apply a similar purposive approach to the case before us. There is no dispute that the overall project is a construction project, whose purpose was the erection of a building for the government of Ontario. Although the work of Final Touch was not directly related to the physical erection of the building, it was necessitated by it, just as, for instance, the erection and maintenance of site offices was necessitated by the project of erecting the building. Further, the final cleanup of the effects of construction is a necessary aspect of making the building ready for use as intended.

42. The Board followed that rationale in *Magic Maid* in concluding that cleaning of construction trailers was work in the construction industry. The Board determined that there was a nexus or connection between the work performed and the construction being carried on. In the instant case, there is a clear connection between the work required to be performed by the locators and the

work of the excavation that requires the locating work be undertaken. These two elements of the process are integral.

43. I deal next with the position advanced by Promark that because the underground utility is contracting with the company, the distinction in *Aramark* applies. In *Aramark*, the Board distinguished between the clean up of trailers by the owner of the property, Shell Canada, and the clean up of trailers by construction contractors on the site. The trailers used by employees of the owner of the site were cleaned by Aramark. The Board held that cleaning of the trailers for employees of Shell was not work in the construction industry. That case distinguished between the cleaning of trailers that serviced the construction trades and the cleaning of trailers for the employees of the owner of the site.

44. The analysis of whether or not work is in the construction industry is determined on the basis of the actual work and not the form of the contract between the employer of the individuals who do the work and the entity that is the beneficial owner of the work.

45. In determining whether the work of the locators is work in the construction industry I must assess whether it is necessary and integral to work in the construction industry. In assessing the work performed in this case, it is clear that the work is necessary for the construction. The legislation that governs the work requires the locates be performed before any digging is done. The work is performed mainly on construction sites. Promark argues that the sites are not, or may not yet be, construction sites at the point at which the locates are done. At times the locators work when construction employees are ahead or behind them in physical proximity and at other times the construction employees may not be attending at the site for weeks.

46. Although Promark relies on the timing of when the work is performed, timing does not favour the company's position. The fact is that the locating work is a necessary prerequisite to the construction work and so is done before the excavation can begin. That timing does not detract from the analysis that the locating work is integrated with the construction work. That is where the analysis in *A-1 Hydrant* is relevant. The work in that case was done after the construction of the water mains yet the Board found that the water main flushing and cleaning process was part of the construction.

47. In *A-1 Hydrant*, the Board was dealing with the work of "cleaning, disinfecting and leak detection" on water mains. The work needed to be done before the water mains would be operational and it was equally clear that the work was done after the actual water mains were constructed. In finding that the work was work in the construction industry the Board said at paragraphs 18 and 21:

> 18 It seems to me that the appropriate approach is to focus on both the work being done and the context in which that work is done. To find that the work in issue is not construction work because the person who did the work is not in the construction industry would, I think, analyze the issue from the wrong perspective. An employer carries on business in the construction industry when it is engaged in constructing water mains. If the work of constructing a water main includes its cleaning, disinfecting and final testing, then the business performing that work is a business engaged in the construction of a water main even though that business does not actually dig the trench or lay the pipe that are also elements of the construction of a water main.

> ...
> 21 Construction work is carried out for a purpose. Water mains in subdivisions are constructed for the purpose of carrying potable water under pressure to the residences in that subdivision. The municipality in which that subdivision is located is responsible for the water mains once it has accepted the water mains from the developer or water main contractor. In the same way that a system must be commissioned to ensure that it has been constructed properly before the owner of the system accepts it from the contractor, water mains must be "commissioned", or cleaned, disinfected and tested before they are turned over to the municipality. Until that happens, it seems to me that the actual construction of the water main is not complete. In other words, until water mains being constructed in a new subdivision can be used for their intended purpose, they remain under construction. The work that is done to finish those water mains so that they can be used for their intended purpose is, in my opinion, a part of the construction of the water mains. Thus, I am satisfied that the cleaning, disinfecting and testing of water mains in a new subdivision before those mains are assumed by the municipality is an element of the construction of those water mains. In the result, the work done by the responding party on water mains in a new subdivision for a contractor or developer is work in the construction industry.

48. In the same way that the construction of the water mains is not completed before the flushing, so too the locating of underground utilities is part of the excavation. It is part of an integral process of "constructing" which is required for excavation.

49. The work of Promark is connected with the work that it is being done for the excavation. The nexus between the locating and the excavating is a strong one. It is not the same as the delivery of material or the conveyance of information. It is a physical job performed on a construction site as an integral and necessary part of the process.

50. Accordingly, I find that the work of Promark is work in the construction industry and the application for certification is properly brought under the construction industry provisions of the Act.

51. These applications are referred to the Registrar to schedule for one day of hearing. The parties should be prepared to deal with the impact of this determination on all the applications cited in paragraph 1 of this decision, what remains, if anything in the construction industry application for certification, and how next to proceed in dealing with these applications.

0468-09-R Glynn Sayeau, Applicant v. The International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario Quinte & St. Lawrence Electrical Workers Local Union 115, Responding Party v. **Terry Shortt Electrical Services Ltd.**, Intervenor

Bargaining Rights – Employee – Status – Termination – IBEW Local 115 held bargaining rights in the ICI sector and in all other sectors in Board Area 12 – In a previous decision, the Board held that the termination application was untimely with respect to the ICI sector, but was timely as it related to all other sectors – On the date of application, the individual applicant performed ICI work for the majority of the day and non-ICI work for a

minority of the day – The issue before the Board was whether an employee must spend a majority of his/her work day performing bargaining unit work in order to be an "employee in a bargaining unit" for the purposes of a termination application – The Board found that applying the "majority of time test to sectors" used in certification applications did not make labour relations sense in the context of termination applications – There was no compelling justification to disqualify an individual as an employee of the bargaining unit in circumstances where that individual, on the date of application, performed work within the geographic area of the bargaining unit, within the scope of the bargaining unit and of the type covered by the collective agreement or certificate in the relevant sector, albeit not for the majority of the workday – The Board found that the applicant was an employee in the bargaining unit on the date of application – The Board found that the majority of time principle, as it relates to sectors, was not applicable to termination applications in the construction industry – Ballot to be counted

BEFORE: *John D. Lewis,* Vice-Chair, and Board Members *B. Roberts* and *R. Baxter.*

APPEARANCES: *Glynn Sayeau* and *Shelly Quinn* appeared for the applicant; *Ron Lebi, Nill Pearse, Dean Sinnott* and *Terry Dorgan* for the responding party; no one appeared for the intervenor.

DECISION OF THE BOARD: March 11, 2010

1. Board File No. 0468-09-R is an application filed with the Board pursuant to sections 63(2) or 132 of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act") for a declaration terminating certain bargaining rights held by the responding party, the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario Quinte & St. Lawrence Electrical Workers Local Union 115 (the "Union").

2. The Union had been certified by decision of the Board dated August 6, 2008 for a bargaining unit of electricians employed in the industrial, commercial and institutional ("ICI") sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry in Board Area 12. In its decision of June 22, 2009, the Board (differently constituted), noted the termination application was untimely as it related to the ICI sector, however, the Board found the application was timely as it related to all other sectors in Board Area 12, as no collective agreement was in place. As a result, the application to terminate the union's bargaining rights pertains to the following non-ICI bargaining unit:

> all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists apprentices and communicating cable installers in the employ of the Terry Shortt Electrical Services in all sectors of the construction industry other than the ICI sector in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland save and except non-working foremen and persons above the rank of non-working foreman.

3. The Union's position is that the applicant ("Sayeau") on the date of application, was not an "employee in the bargaining unit", as a majority of Sayeau's time was not spent working within the bargaining unit he was seeking to terminate.

The Facts

4. A hearing into Sayeau's status took place in this matter. The applicant was the only witness who testified and the basic facts established by his evidence are not in dispute.

5. Sayeau, is either a fourth (4th) or fifth (5th) year electricians' apprentice who works for the intervenor, Terry Shortt Electrical Services Ltd. (the "Company"). Terry Shortt ("Shortt") is a journeymen electrician and is the owner of the Company. On the date of application, Sayeau was the Compnay's only unionized employee who performed *work within the bargaining unit that is the subject matter of the termination application*. Sayeau testified that the Company does not do much residential work, perhaps only one residential call per week.

6. On May 12, 2009, the date of application, Sayeau spent approximately four (4) hours in the morning at an ICI project removing old electrical conduit and equipment from a commercial establishment, C.B. Freezers, located in Trenton, Ontario. While Sayeau did not concede that such electrical work was "electricians" work, the Board in *Everbrite Industries Ltd.* [2006] CanLII 4189 (ONLRB) (February 14, 2006), paragraph 13, has found electrical demolition work to be the work of an electrician.

7. Work at C.B. Freezers that morning eventually came to a standstill. Under Shortt's supervision, Sayeau was asked to go over to a residential home in Trenton (Board Area 12) to complete a re-wire and service upgrade project as a hydro inspection was taking place the next day. In this regard, Sayeau worked on installing a wire mould receptacle box, installed approximately 15-20 feet of wire mould, installed a wire mould lamp holder and tied in the switch leg. The wire for the home run and the switch leg had been installed the previous week but the circuit and the wire mould were not completed until May 12th. This work took approximately two (2) hours to complete.

8. After the residential work was completed, Sayeau returned to the ICI project at C.B. Freezers and assisted Shortt in doing drops into the freezer and continued with the removal of the electrical equipment from the roof. Sayeau spent a further four (4) hours performing the above work at C.B. Freezers.

9. Based on the evidence of Sayeau the Board finds that, on the date of application, the applicant performed ICI electricians' apprentice work for approximately eight (8) hours and performed non-ICI (ie. residential) electricians' apprentice work for approximately two (2) hours.

10. The Board finds the residential electrical work performed by Sayeau is work covered by the Union's non-ICI Board Area 12 certificate.

The Act

11. Sections 63(1), 63(2), 63(5)-(7), and 132(1) of the Act state the following:

> **63.** (1) If a trade union does not make a collective agreement with the employer within one year after its certification, any of the *employees in the bargaining unit* determined in the certificate may, subject to section 67,

apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit.

(2) Any of the *employees in the bargaining unit* defined in a collective agreement may, subject to section 67, apply to the Board for a declaration that the trade union no longer represents the *employees in the bargaining unit*,

(a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last three months of its operation;

(b) in the case of a collective agreement for a term of more than three years, only after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation and during the three-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last three months of its operation, as the case may be;

(c) in the case of a collective agreement referred to in clause (a) or (b) that provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, only during the last three months of each year that it so continues to operate or after the commencement of the last three months of its operation, as the case may be.

...

(5) If the Board determines that 40 per cent or more of the *employees in the bargaining unit* appear to have expressed a wish not to be represented by the trade union at the time the application was filed, the Board shall direct that a representation vote be taken among the *employees in the bargaining unit*.

(6) The number of *employees in the bargaining unit* who appear to have expressed a wish not to be represented by the trade union shall be determined with reference only to the information provided in the application and the accompanying information provided under subsection (4).

(7) The Board may consider such information as it considers appropriate to determine the number of *employees in the bargaining unit*.

132. (1) If a trade union does not make a collective agreement with the employer within six months after its certification, any of the *employees in the bargaining unit* determined in the certificate may apply to the Board for

> a declaration that the trade union no longer represents the employees in the bargaining unit.
>
> (emphasis added)

12. Section 63 of the Act contains the relevant statutory provisions when an employee or group of employees applies to terminate the bargaining rights of their union. Section 63 applies to both construction and non-construction employees, with the exception that, as per the provisions of section 132(1), a termination application is, in part, abridged in construction applications as it can be brought six (6) months after certification if there is no collective agreement.

13. The provisions of section 63 and 132 of the Act make it clear that only "*employees in the bargaining unit*" determined in the certificate or as defined in the collective agreement have the right to bring a termination application and are eligible to participate in any representation vote.

Argument and Decision

14. It is the Union's position that Sayeau did not spend the majority of his work time, on the date of application, performing work within the bargaining unit he is seeking to terminate and therefore should not be considered an "*employee in the bargaining unit*".

15. The Union does not deny that Sayeau performed some work covered by its non-ICI certificate on the date of application, however, it argues that when all of the time is added up, Sayeau did not spend the majority of his work day performing bargaining unit work. It is the Union's position that Sayeau is neither eligible to bring the application nor eligible to vote based on the principles established by the Board in *Gilvesy Enterprises Inc.*, [1987] OLRB Rep. Feb. 220.

16. *Gilvesy, supra,* involved a construction certification application and not a termination application. The Union, however, argues that the principles established by the Board in the context of construction certifications, as to who is an "employee in the bargaining unit", should also apply in the context of construction termination applications.

17. The relevant principles from *Gilvesy Enterprises Inc., supra,* concerning certification applications are set out at paragraph 21 of the decision as follows:

> 21. In making our determination, we considered the work performed by the persons whose status was in dispute in these proceedings both on the date of application and during a period prior to that date. However, it appears to us that recourse to a "representative period" has made the certification process in the construction industry less consistent, certain, and expeditious than it might be. The use of any such period is inconsistent with the requirement that a person be both employed by the respondent and at work on the date of application. The very nature of a "representative period" is such that its length will vary according to the circumstances of the particular application and creates uncertainty. Looking to a "representative period" overlooks the fact that once a trade union has been certified as bargaining agent for a bargaining unit of employees of an employer in the construction industry, any collective agreement to which that employer becomes bound, whether a provincial agreement or not, will apply to persons doing the work covered by that agreement. Consequently, whether or not an employee is

> covered by a particular collective agreement and represented by a particular bargaining agent depends on the work that s/he is doing at the time and is in no way dependent upon the work that s/he performed during any previous period. Further, the use of a "representative period" has tended to result in protracted and expensive proceedings before the Board. Because it is important that the Board's policies and tests be consistent and create, as certain, equitable, and expeditious a means as possible for ascertaining which persons are in a bargaining unit, and having regard to the nature of applications for certification in the construction industry, we take the view that the Board should eliminate its use of a "representative period" and restrict itself to the following criteria:
>
> (a) whether the person was employed by the respondent and at work on the date of application; and
>
> *(b) if so, the work that that person spent the majority of his time doing on the date of application; or*
>
> (c) where there is no conclusive evidence with respect to the work that the employee performed on the date of application, any other relevant factor, including the primary reason for hire.
>
> [emphasis added]

18. The Union argues that in the context of construction certifications the Board has applied and refined the majority of time test to work within the relevant sector and relies on the decision in *Eastway Construction Ltd.*, [2006] OLRB Rep. May/June 341 (June 13, 2006) for this proposition. The Union advances the position that if time within the relevant sector is taken into account by the Board when determining who is an "employee in a bargaining unit" for purposes of establishing construction bargaining rights, the Board should also take time within the relevant sector into account when determining who is "an employee in the bargaining unit" for purposes of terminating construction bargaining rights. At its simplest the Union's argument is that the Board's approach as to who is an "employee in the bargaining unit" on the date of application in construction industry terminations should mirror the approach which the Board has adopted in the context of construction industry certifications.

19. The Union urges that a proper statutory interpretation of the Act requires the same approach by the Board as both construction certification applications and construction termination applications refer to the same qualifying phrase contained in the Act, namely, "*employees in the bargaining unit*". The Union argues for symmetry in the Board's interpretation of the phrase "*employees in the bargaining unit*" when either acquiring bargaining rights or when terminating bargaining rights. The position advanced by the Union has some logic and attractiveness to it, however, it ignores the fact that the statutory provisions and purposes for acquiring and terminating bargaining rights are not the same and therefore it is not necessarily appropriate to view them as mirror images of each other.

20. In *Fred Jantz Masonry Construction Company Limited,* [1986] OLRB Rep. Aug. 1083, the Board dealt with a scenario where the applicants sought termination of bargaining rights for both the ICI sector, covered by the statutory provincial agreement, and the non-ICI sectors, where it was agreed there was no collective agreement. In both scenarios the application was timely and the

question became whether employees, who had worked in the residential sector for many years under no collective agreement, could terminate the union's bargaining rights in the ICI sector where they had not worked at all.

21. In the *Fred Jantz* decision, at paragraph 14, *supra*, the Board made the following comment:

> Although in particular cases there may be problems of characterization, the Board has generally held that employees who apply for termination of bargaining rights must actually be employed "in the bargaining unit" on the date of application. Thus, a "part-time" employee could not seek termination of bargaining rights in the "full-time" unit and *vice versa*. Similarly, in the construction industry the Board has held that an employee who applies for termination must be at work within the geographic area of the unit on the application date and must be employed in the trade or craft...

22. The Employer in *Fred Jantz Masonry Construction Company Limited, supra*, argued that the process by which bargaining rights are acquired or terminated should be the same. The employer argued that if a union could acquire bargaining rights for both a provincial ICI unit and one or more non-ICI sector units, even though the employer did not have anyone working on ICI projects at the time the application was made, employees should be able to terminate an ICI unit even though, at the time of termination it had no employees working in the ICI sector. The Board rejected the employer's argument and at paragraph 25 stated the following:

> *An appeal for symmetry always has some attraction, but the fact is, that the mechanisms for acquiring and terminating bargaining rights are not the same.* On an application for certification the Board determines the appropriate bargaining unit and, in many cases, can issue a certificate establishing bargaining rights without recourse to a representation vote. In a termination application the bargaining unit is the one the parties have defined in their collective agreement and that unit may or may not be the same as, or find its origin in a Board certificate issued some time before; moreover, unless the union voluntarily relinquishes its rights, bargaining rights can only be terminated by a representation vote. *It is simply wrong to assume that bargaining rights must be acquired and lost in precisely the same way.*
>
> [emphasis added]

23. In the present matter, the Union's position that the statutory phrase "employees in the bargaining unit" must be interpreted by the Board in the same way when bargaining rights are either acquired or terminated is simply wrong. The common phrase "*employees in the bargaining unit*" found in section 63 of the Act applies to both construction and non-construction employees. In the context of non-construction terminations, the phrase as been interpreted by the Board to mean an employee who has an ongoing employment relationship with the employer on the application filing date. In construction terminations, even though the same statutory phrase "*employees in the bargaining unit*" is used, the Board has rejected the "ongoing relationship approach" to determine employee eligibility (see *Dryden Electrix Inc.*, [2007] OLRB Rep. May/June 537 (May 2, 2007)). As the above example illustrates, the mere fact that a common statutory phrase is used does not dictate the Board must interpret that phrase in the same exact manner. The Board must interpret that

common phrase having regard to the statutory context and purpose of the relevant provisions of the Act and apply the Board's experience and expertise to the particular issue.

24. Bargaining rights do not have to be acquired and lost in precisely the same way. For example, the Board has long entertained applications for termination of bargaining rights that are brought by one individual, while the Board will not entertain an application for certification involving one employee (see *A.R. Milne Electric Ltd.*, [1982] OLRB Rep. June 911; *City Plumbing (Kitchener) Limited*, [1986] OLRB Rep. Sept. 1206; *4061365 Canada Inc.*, [2004] OLRB Rep. Nov./Dec. 1058 (November 8, 2004)).

25. In *Silverline Group Inc.*, [2007] OLRD No. 1141 (QL) (March 19, 2007), the Board dealt with an application seeking to terminate the bargaining rights of the Operating Engineers in a non-ICI bargaining unit in Board Area 26. One individual spent two (2) hours, on the date of application, performing bargaining unit work in the residential sector and one and a half (1½) hours doing operating engineers work on an ICI site. Therefore, the individual spent the majority of his workday within the non-ICI bargaining unit and as such he was eligible to vote.

26. In the *Silverline* decision, *supra*, at paragraph 21, the Board commented on the *Gilvesy* principles as follows:

> The principles set out in *Gilvesy* and which have thereafter been followed by the Board, have been established because of the historical fact that bargaining rights in the construction industry are generally described with respect to a specific trade(s). Therefore in applications concerning bargaining rights which are so described, as is the case here, it is necessary to examine the work which a particular employee was performing on the date of application in order to determine if it is the work of the relevant trade such that he or she would fall within the relevant bargaining unit. *The "majority of the time" test is relevant in those situations where an employee performed the work of more than one trade on a particular date as the Board has held that, as a general rule, an employee can not be in more than one construction industry bargaining unit on any given day. That is not the case here and therefore the Union's argument cannot succeed.*
>
> [emphasis added]

27. In *Silverline*, *supra*, the Board further commented, at paragraph 24 of the decision, that due to the facts concerning that particular individual it was "not necessary to determine if the majority of the employee's time principle set out in *Gilvesy*, *supra*, applies to sectors as well as trades".

28. The Board is not aware of any prior termination application decisions where the Board has expressly adopted the approach in *Eastway Construction Ltd.*, *supra*, and found that, in the context of a termination application, the majority of the employee's time principle, set out in *Gilvesy*, *supra*, and as refined by *Eastway Construction Ltd.*, *supra*, applies to sectors as well as trades. Rather, how the Board approaches the issue of sector, in the context of a construction termination application is set out in the decision of *C.I.R. Painting and Industrial Coatings Ltd.* ,[2005] O.L.R.D. No. 2402 (QL) (June 9, 2005) at paragraph 15, as follows:

Finally, the Painters seek to rely on the fact that it challenged all ten individuals during the pre-vote and post-vote meetings. The worksheet indicates that these individuals were challenged by the union on the following basis" "not in B.U. on the day of application". As discussed in C.S.B.I. CONTRACTING LTD., [2001] O.L.R.D. No. 3095:

> 16. In order to be eligible to vote in a representation vote held in connection with a construction industry termination application, an individual must have been at work in the bargaining unit on the Application Filing Date. In order to be working within the bargaining unit, the individual must have been engaged in work covered by the scope clause of the relevant collective agreement. A construction industry scope clause typically defines the work covered by the collective agreement in terms of geographic scope, nature of the work performed and sector. The assertion that an individual was not at work in the bargaining unit on the date of application is thus understood in commonly used construction industry parlance to include any one or more of the following four assertions:
>
> (i) the individual was not working at all on the date of application;
> (ii) the individual was working on the date of application but not in the geographic scope of the collective agreement;
> (iii) the individual was working in the geographic scope of the collective agreement on the date of application but not at the type of work covered by the collective agreement; or
> (iv) the individual was working in the geographic scope of the collective agreement performing the type of work covered by the collective agreement but in a sector of the construction industry not covered by the collective agreement.
>
> If any one or more of such challenges proves to be true, the individual in question was not "at work in the bargaining unit on the date of application" and is not eligible to vote.

29. The Board's prior jurisprudence, as outlined in *C.I.R. Painting and Industrial Coatings Ltd., supra*, and *C.S.B.I. Contracting Ltd., supra*, outlines the approach the Board has adopted concerning the issue of sector when determining whether an individual is at work in the bargaining unit on the date of application for the purposes of a termination application. In this regard, the Board has not applied a "majority of time test" as it relates to sector.

30. The Board has reviewed all of the decisions concerning the termination of bargaining rights relied on by the Union in the present matter (*Advance Installations,* [1995] OLRD No. 2585 (QL) (July 17, 1995); *Gavigan Contracting Ltd.,* [1996] OLRB Rep. May/June 405 and *Hall* [2004] OLRD No. 2083 (QL) (August 16, 2004) and finds that none of those decisions expressly consider or

endorse the "majority of time applying to the sector" principle advanced by the Union. As such they are distinguishable from the particular facts in the present matter.

31. In *Advance Installations, supra*, the responding party, Millwright Local 1916, asserted that on the application date there were no persons in the bargaining unit performing work covered by the collective agreement which applied only to the ICI sector. The Millwrights did not assert, nor did the collective agreement cover, any other sector or maintenance, service or shop work. As such the Board did not have to deal with the sector issue. At paragraph 6 of the decision, the Board commented as follows:

> The evidence shows the work performed on the application date was primarily service work or maintenance work with approximately one and one half to two hours of repair work that could arguably be described as construction work. The Board does not need to decide whether the replacing and welding of a part at the conveyor gate is construction work or maintenance work in these circumstances. If this were a certification application and applying for the "majority of time" test the work performed on the application date would not be construction work. For the same reasons as set out in GILVESY ENTERPRISES INC., [1987] OLRB Rep. Feb 220 *we find that the work performed on the application date was service and or maintenance work which is not covered by the collective agreement the applicant is seeking to terminate.*
>
> [emphasis added]

32. In *Gavigan Contracting Ltd., supra,* the termination application related to a non-ICI bargaining unit of construction labourers in Board Area 3, who were covered by a collective agreement. On the date of application, the relevant individual may have spent some time on an ICI project but the majority of his time was spent performing work in the employer's yard. At paragraph 16 of the decision, the Board found that all of the work performed on the date of application was "not work covered by the non-ICI collective agreement". In effect, the Board found the individual was not a construction employee and as such it did not have to deal with the sector issue (see *1248833 Ontario Inc. (c.o.b. Harold's Demolition and Recycling)* [2001] OLRD No. 2947 (QL) (January 18, 2001), at para. 46).

33. In *Hall, supra*, the applicant sought to terminate bargaining rights for a non-ICI bargaining unit of construction labourers in Board Area 8 who were covered by a collective agreement. Hall testified that he was at work at a Milton job site from 7:30 a.m. to 4:00 p.m. preparing a home for closing. He testified that it was unlikely that he was directed to perform "other work" off site for any part of the day. At paragraph 17 of the decision, it is clear the Board did not consider whether this "other work", if it had been performed, was work covered by the collective agreement, or whether it was in another sector, as it did not have to. Based on the evidence it was clear to the Board that even if that had been the case Hall had still clearly spent the majority of his day performing work in the bargaining unit.

34. As noted above, in the decision of *Eastway Construction Ltd., supra*, at paragraph 9, the Board considered, for the first time, the issue of whether, in assessing the work that a person spent a majority of his/her time doing on the date of certification, the Board should consider the sector in which the work was performed along with what "trade" it might fall into. The Board found, in the

context of certification applications, it was proper to consider the sector in which the person was working, in the application of the majority of time test.

35. In reviewing the *Eastway Construction Ltd.*, decision, it is apparent the Board's reasoning was guided by the core principle that in a certification application an employee can only be in one bargaining unit at the time the application is made. As such, with that core principle in mind, the Board was concerned that not taking sector into account could lead to employer mischief and a number of problematic and/or inconsistent findings.

36. At paragraphs 15 and 16 of the *Eastway* decision, *supra*, the Board commented as follows:

> 15. In addition, potential mischief could result if any amount of time in the relevant sector(s) were sufficient for an employee to be included in the unit for which the union applied. A trade union that filed a certification application on a particular day after having watched which employees of the responding party were performing work of the relevant trade for the majority of that day at the responding party's job sites falling within the scope of the bargaining unit sought could have its application defeated by the responding party's decision to reassign its workforce as soon as the application for certification was delivered to the responding party. For example, a responding party who had labourers working at an ICI site and labourers working at a residential job site on the date of application could simply send all of its labourers who were working at the ICI job site to pick up some garbage at its residential job site for a short period at the end of their work day in an effort to defeat a certification application received that day in respect of a unit of all construction labourers in all sectors of the construction industry, excluding the ICI sector.
>
> 16. Finally, if performance of *any* amount of time in the sector(s) for which the union applied were sufficient to have a person included, the union's organizer would be required to monitor and the Board would be required to consider, what trade of work that individual performed in sectors which fall outside of the scope of the relevant bargaining unit. The Board would be required to do so, since the jurisprudence makes clear that an individual must have performed work of the relevant trade for the majority of the day on the date of application. In my view, the Board should not be looking at one "snapshot" of the work done by an employee when it comes to the trade and a different "snapshot" of the work that that individual did on the date of application when it comes to sector and yet a different "snapshot" again if more than one application for certification in respect of the responding party's employees were filed on the same day. Quite apart from the hurdles that such a varied approach would place to organizing and adjudication, such an approach would also result in inconsistent outcomes depending on whether one or more than one certification application were filed on a given day.

37. The Board finds the same problems and mischief identified by the Board in the *Eastway* decision, *supra*, as it relates to certifications, do not exist in the context of termination applications. For example, if a unionized employer was to re-assign workers contrary to the applicable collective agreement or contrary to the Act in order to support a termination application, the Board's decision in *April Waterproofing*, [1980] OLRB Rep. Nov. 1577 and section 63(16) of the Act, provide effective remedies to the bargaining agent to counter such mischief by the employer. Further, it is not

uncommon in the construction industry that, once bargaining rights have been granted, employers become bound to more than one collective agreement covering the same trade and that employees in a trade can thereby fall into more than one bargaining unit and can perform work in more than one bargaining unit on the same day.

38. In termination applications, the certification core principle that one employee can only be in one bargaining unit at a time is no longer sacrosanct. Once certified, an employee can be employed in more than one bargaining unit and work under more than one collective agreement. A unionized member of a trade, such as a construction labourer who works for a unionized employer, may be assigned to do work that falls within the scope of one collective agreement in the morning and work that falls within the scope of a different collective agreement in the afternoon.

39. In the context of a termination application, if a snapshot of a single day is taken a construction employee, like a labourer, may be called upon to perform some labourers' road work in the morning, in all likelihood, under the terms and conditions of a collective agreement that pertains to road building. As such, the construction labourer would have the right to receive the wages and benefits negotiated under that agreement and also the right to grieve events of that morning, regardless of whether he worked in that sector for one hour or ten hours. Whether or not the majority of that working day was spent working within that particular bargaining unit, that labourer has certain rights which have been crystallized on that particular day. Even if no collective agreement was in place that labourer still has crystallized statutory rights that flow as a result of the union being issued a bargaining certificate. For example, that individual has the statutory right to have union representation; the right to have the union be his or her exclusive bargaining agent and to be fairly represented by it; the right to bargain a collective agreement; and the right to not have his or her terms and conditions of employment changed in breach of the statutory freeze provisions of the Act.

40. If one continues with the above snapshot scenario and assumes the labourer is properly assigned work covered by the ICI Provincial Agreement for the rest of the afternoon, which then comprises the majority of his work day, this labourer would again have the right to be paid the applicable wages and benefits outlined in the Provincial ICI agreement and the right to grieve events of that afternoon under the ICI agreement.

41. If one extrapolates this one day snapshot scenario to include the fact that a timely termination application is filed, which pertains only to the employees covered by the road building agreement, the *Eastway Construction* "majority of time test to sectors" would result in the labourer not being found to an "employee in the bargaining unit", as he or she did not spend the majority of their day performing work covered by the road building agreement. This labourer, who had crystallized rights on the date of the termination, would have no say in determining whether the Labourers' union should continue to represent him or her in the exercise of those crystallized rights. This can not be an appropriate interpretation of the Act.

42. In the case at hand, the evidence clearly indicates that Sayeau spent almost his entire working day, on the date of application, performing work of the electrician's trade. The evidence discloses that he performed electricians' apprentice work (ie. approximately two (2) hours) in the non-ICI sectors in Board Area 12. The bargaining unit that is the subject of the termination application is a non-ICI electrical trade unit in Board Area 12. The bargaining unit does not differentiate between full-time or part-time electricians or electricians' apprentices. It is the standard non-ICI "all electrical trade" bargaining unit that the Board typically issues. The fact that Sayeau

only performed work, for what may be considered "part-time" hours (ie. 2 hours), should not negatively effect his status as an employee in the bargaining unit or being an employee covered by a collective agreement, if one had existed. Applying the principles set out in *C.I.R. Painting and Industrial Coatings Ltd., supra,* and *C.S.B.I. Contracting Ltd., supra,* on the application date, Sayeau was an individual who worked in the geographic scope of the bargaining unit determined in the certificate; performing the type of work covered by the certificate; and in a sector covered by the certificate.

43. Adopting and applying the *Eastway* certification "majority of time test to sectors", in the context of termination applications, does not make labour relations sense. A symmetrical adoption of the test could unfairly result in an individual, who has acquired crystallized rights on the date of application, (ie. crystallized either by operation of the collective agreement or by statute) and who has a union as their exclusive bargaining agent, being denied their right to participate in deciding whether to remain represented by that union or not. Given the statutory provisions and purposes for acquiring and terminating bargaining rights are not the same, it would be inappropriate for the Board to adopt a certification approach that could effectively deny an individual, like Sayeau, the right to choose if they wish to remain represented by the Union.

44. The Board sees no compelling justification to disqualify an individual as "an employee in the bargaining unit" in circumstances where that individual, on the date of application, has preformed work within (i) the geographic area of the bargaining unit; (ii) has performed work within the scope of the bargaining unit, as determined in the certificate or the collective agreement; and (iii) has performed the type of work covered by the collective agreement or the certificate, in the relevant sector(s) that pertain to the collective agreement or the certificate, albeit not for the majority of his/her workday.

45. Based on the evidence, the Board finds that Sayeau was an employee in the bargaining unit determined in the certificate, on the date of application, as Sayeau performed non-ICI electricians' apprentice work in Board Area 12 for approximately two (2) hours on the date of application. In addition, it is also of note that Sayeau spent the majority of his work time, on the application date, performing the work of the responding union's trade.

46. Section 132(1) of the Act allows "employee(s) in the bargaining unit determined in the certificate" the ability to apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit. For the reasons already set out in this decision, the Board finds that the majority of time principle as it relates to sectors, found by the Board to be applicable in construction certifications, is not applicable to construction termination applications.

47. Given the Board has found Sayeu to be an "employee in the bargaining unit", he is eligible to vote. As a representation vote has already been held in this matter and the ballot box was sealed, the Board directs the Manager of Filed Services to contact the parties and make the appropriate arrangements for the counting of the ballot.

0506-09-HS Xstrata Canada Corporation, Appellant v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union

(United Steelworkers), Local 2020; Rick Kulyski, Inspector; and Canadian Auto Workers (CAW) Canada and its Local 598, Responding Parties

Health and Safety – Reconsideration – The Board allowed an appeal of the Inspector's order ([2010] OLRB Rep. Jan/Feb 199) and both the Union and the Ministry of Labour applied for reconsideration – The Union submitted that the underlying factual basis for the Board's decision had changed significantly since the employer had decided to reopen one of the mines which was only on care and maintenance – The Board found that the evidence that the Union sought to put before the Board related to developments that occurred or will take place after the order under appeal was issued, and were accordingly irrelevant and would not be considered by the Board – The Board went on to note that the dismissal of the appeal and denial of the reconsideration did not preclude an inspector conducting another investigation and making a determination with respect to the employer's compliance with the Regulations based on the facts that exist when the investigation takes place – Reconsideration denied

BEFORE: *Harry Freedman*, Vice-Chair.

DECISION OF THE BOARD: April 6, 2010

1. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union (United Steelworkers), Local 2020 ("Local 2020") and the Ministry of Labour ("MOL") on behalf of Inspector Rick Kulyski each filed a request for reconsideration of the Board's decision dated February 5, 2010 allowing this appeal under section 61 of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 as am. (the "Act") and rescinding the order made by Mr. Kulyski on April 15, 2009. The MOL's request was filed on March 1st. The request for reconsideration made by Local 2020 was filed on March 2nd. Both requests were made within the time prescribed by Rule 18 of the Board's Rules of Procedure.

2. In decisions dated March 2 and March 4, 2010 the Board provided the parties with a schedule for the filing of their submissions, commented on the Board's authority to reconsider a decision made under section 61 of the Act, and discussed its approach to requests for reconsideration made pursuant to section 61(8) of the Act.

3. The appellant filed submissions in response to the two requests for reconsideration. The Canadian Auto Workers (CAW) Canada and its Local 598 ("Local 598") made no submissions with respect to the requests for reconsideration. Local 2020 filed submissions in reply to the appellant's response while the MOL did not.

4. The Board's power to reconsider its decision in an appeal of an inspector's order under section 61 of the Act is found in section 61(8). Section 61(8) provides:

> (8) The Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it under this section and may vary or revoke any such decision, order, direction, declaration or ruling.

When exercising that power, the Board must also have regard to section 61(6) of the Act which provides:

> (6) A decision of the Board under this section is final.

5. When dealing with requests for reconsideration under the Act, the Board has adopted the approach it developed when considering requests for reconsideration under section 114(1) of the *Labour Relations Act, 1995*, S. O. 1995, c. 1 as am. which provides:

> The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

See, for example, *Wal-Mart*, [2005] OLRB Rep. Nov./Dec. 1043 (November 10, 2005); *Toronto Police Services Board*, decision dated April 11, 2008, unreported, Board File No. 3382-06-HS, Q.L. cite [2008] OOHSAD No. 16.

6. Both the *Labour Relations Act, 1995* and the Act provide that the Board's decisions are "final" (section 114(1) of the *Labour Relations Act, 1995* adds the words "and conclusive for all purposes") but also state the Board may reconsider a "final" decision if the Board "considers it advisable to do so".

7. Given both the Act and the *Labour Relations Act, 1995*, permit the Board to reconsider a decision when it "considers it advisable to do so", it is appropriate to apply the test for reconsideration the Board has developed under the *Labour Relations Act, 1995* to requests under section 61(8) of the Act for reconsideration. The Board in *Toronto Police Services Board* made the following observation at paragraph 2:

> The Board's approach to reconsideration requests under the Act is similar to the approach it has taken under the *Labour Relations Act, 1995*. In order to provide parties before the Board with a substantial degree of certainty, the Board will not permit a party to attempt to reargue its case under the guise of a request for reconsideration. The Board generally will not reconsider its decisions unless:
>
> a. A party wishes to make representations or objections not already considered by the Board that it had no opportunity to raise previously;
>
> b. A party wishes to adduce evidence which could not previously have been obtained with reasonable diligence and which would be practically conclusive of the issue or make a substantial difference to the outcome of the case; or
>
> c. The request raises significant and important issues of Board policy which the Board is convinced were decided wrongly in the first instance.
>
> The Board may also consider such factors as the motives for the request for reconsideration in light of a party's conduct, and the resulting prejudice to

> other parties if the case is reopened. See generally *Cineplex Odeon Corp.* [1996] OLRB Rep. Nov./Dec. 922 and the cases cited therein.

See also *K-Mart Canada Limited*, [1981] OLRB Rep. Feb. 185.

8. While the Board has the discretion to reconsider a decision when the Board "considers it advisable to do so", given that section 61(6) of the Act explicitly provides that a decision made by the Board under section 61 is final, as the Board discussed in its March 2nd decision in this matter, a request for reconsideration is not an opportunity for a party who disagrees with a decision of the Board to repeat the submissions it made or could have made earlier or to reargue its case. The Board ought not to reconsider a decision unless it has made an obvious error that is material to the result, the request for reconsideration raises important policy issues that have not been properly addressed, the party requesting reconsideration seeks to make submissions that it had no previous opportunity to put before the Board or adduce new evidence which it could not, with the exercise of reasonable diligence, have obtained and provided previously, and which new evidence would, if accepted, have a material impact on the result.

9. The appellant in its submissions in response to the reconsideration request made by the MOL contends the reconsideration request does not raise any issue that was not addressed in argument at the hearing of the appeal. I agree with the appellant.

10. It seems to me the MOL has essentially repeated and elaborated on the submissions made at the hearing with respect to the correct approach the Board ought to take in interpreting the Act. The MOL in its reconsideration request contended the Board should follow the approach in *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 when interpreting the Act by giving it the interpretation that would afford the greatest protection to the workers affected by the issue. Local 2020 agrees with and supports the request for reconsideration filed by the MOL.

11. The Board specifically addressed how to approach the interpretation of the Act in its February 5, 2010 decision. At paragraphs 32 through 34 of that decision, the Board discussed the parties' arguments with respect to how the Board ought to interpret of the Act, having regard to *Rizzo & Rizzo Shoes Ltd.* and several other decisions that discuss the remedial nature of the Act. At paragraph 49, the Board specifically considered how to interpret the Act when it wrote:

> I am satisfied section 281.1(3) of Reg. 854, when read in context and in light of the broad and remedial nature of the Act as a whole, balances the obligation to ensure a first aid room close to the entrance of an underground mine is in the charge of a qualified first aid attendant who is readily available to administer first aid with the need for an underground mine operator to maintain a reasonable staffing complement.

The appellant's submission, which I adopt, contends the request for reconsideration by the MOL essentially seeks to repeat the arguments made at the hearing and in effect is an attempt to reargue the case. The submissions made by the MOL do not persuade me to reconsider the February 5th decision.

12. Local 2020 in its request for reconsideration contends there are new facts material to the disposition of the matter that it could not have brought before the Board previously. Local 2020 submits the underlying factual basis for the Board's decision has changed significantly. The Board

based its decision on the fact that the mines where the first aid rooms in issue were located were not in production and only a relatively few individuals were working underground at those two mines performing mine maintenance. Local 2020 submits the appellant has recently decided to reopen one of the mines that had been on care and maintenance. In essence, Local 2020 submits that those new facts should cause the Board to reconsider its decision and permit the order under appeal to remain in force.

13. The appellant in its response submits what has transpired at the Xstrata mines since the order under appeal was issued ought not to be considered. The appellant argues that evidence relating to events occurring after the order under appeal was made is irrelevant and therefore inadmissible. The appellant submits a proper assessment of the merits of an appeal under section 61 of the Act requires the Board to make its decision by having regard to only the circumstances in place at the time the order under appeal was issued.

14. The appellant referred to the Office of Adjudication decision in *Chrysler Canada Ltd.*, Decision No. OHS 96-30, decision dated June 13, 1996, Q.L. cite [1996] OOHSAD No. 36 in which the Adjudicator wrote at paragraph 6:

> In many workplaces, the same issues recur, with new incidents, partial resolutions, and then the cycle begins again, with more discussion, partial resolution and on it goes. In contrast, the proceedings before me are of necessity more static. My role is to sit in review of circumstances or issues that were brought to the attention of an Inspector at a certain point in time, about which the Inspector either wrote or did not write Orders. My job is to look at the same issues and circumstances that were brought to the attention of the Inspector, and decide if the Inspector made the right decision.

See also *1353837 Ontario Inc.*, [2007] OLRB Rep. May/June 481 (May 22, 2007) in which the Board specifically held the events that occurred after the order under appeal in that case had been issued would not be considered by the Board.

15. Local 2020 in its reply to the appellant's submissions does not suggest the appellant's legal submissions are incorrect. Rather, it states:

> The Employer contends that the facts in the Union's request for reconsideration should not be considered by the Board as they were irrelevant to the decision faced by the inspector at the time the Order was issued.
>
> It is precisely because the factual underpinnings of the case have changed that the Union seeks reconsideration of the Board's February 5, 2010 decision. As outlined in the Union's submissions seeking reconsideration, in rescinding the Inspector's order, the Board relied almost exclusively on the numbers of employees working at the mine sites in issue. That number has changed significantly, therefore completely changing the entire basis for the Board's decision.

16. In *Ottawa Carleton Detention Centre*, decision dated June 21, 1999, unreported, Board File No. 0487-98-HS, Q.L. cite [1999] OOHSAD No. 290, the Board referred to section 61(4) of the Act, which provides:

> On an appeal under this section, the Board may substitute its findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Board shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector.

The Board then commented at paragraph 16:

> Essentially, the Board "stands in the shoes" of the inspector when determining what remedy should follow from an appeal of an inspector's decision.

That same approach was adopted by the Board in *KE Electrical Services*, [2005] OLRB Rep. September/October 804 (September 26, 2005).

17. In *Timmins Police Services Board*, decision dated October 14, 1999, unreported, Board File No. 3718-96-HS, Q.L. cite [1999] OOHSAD No. 296 the Board in an appeal under section 61 of the Act received evidence relating to events that had transpired after the order under appeal had been made. The Board explained its rationale for doing so at paragraph 102:

> Although the proper approach to appeals under the Act is to look at the same circumstances that prevailed when the Health and Safety Inspector made his or her original order, in this case many changes have occurred subsequently and the parties want the Orders under appeal to be reviewed on the basis of those changes. Accordingly, the Inspector's Orders must be judged in the context of the changes that have already been brought about by the employer as a result of the Orders being issued. In other words, my evaluation of the Orders must be done in the context of current problems, and not on the usual basis of the historical situation that applied at the time the Orders were made. If I were to do otherwise then my evaluation would be of theoretical interest only, and of little practical value.

The decision in *Timmins Police Services Board* observed "the proper approach to appeals under the Act is to look at the same circumstances that prevailed when the…Inspector made [the] original order". During the course of the hearing, based on agreement of the parties, the Board received a good deal of evidence about what changes had been implemented by the employer after the orders under appeal had been issued. See paragraphs 58 to 78.

18. In the case before me, not only does the appellant object to the introduction of such evidence, Local 2020 seeks to place that evidence before the Board after the conclusion of the hearing on the appeal through its request for reconsideration. The approach adopted by the Board *Timmins Police Services Board* is not applicable in this proceeding.

19. This is a reconsideration request of a Board decision that was determined based on the evidence presented at the hearing with respect to the circumstances existing at the time Mr. Kulyski undertook his investigation and issued the order under appeal. Contrary to the submissions of Local 2020, events occurring after an inspector issues an order, and indeed, after the hearing of the appeal had concluded, do not constitute the type of evidence the Board contemplated when it has held it

would reconsider a matter if a party sought to adduce new evidence which it could not, with the exercise of reasonable diligence, have obtained and provided previously. The new evidence must be relevant to the issues under appeal. Because the evidence Local 2020 seeks to put before the Board in its reconsideration request relates to developments that have occurred or will take place after the order under appeal was issued, it is irrelevant and therefore will not be considered by the Board.

20. The requests for reconsideration made by the MOL and by Local 2020 are denied.

21. I would be remiss if I did not observe that the dismissal of the appeal and the denial of the requests for reconsideration do not preclude Mr. Kulyski or any other inspector from the Ministry of Labour from conducting another investigation and making a determination with respect to appellant's compliance with section 281.1 of Reg. 854 under the Act based on the facts and circumstances existing at the mines when a new investigation takes place, should one be undertaken. Whether the two first aid rooms near the entrances to the Fraser Mine and the Craig Mine must be in the charge of two different first aid attendants when the number of employees working at those mines increases as a result of production resuming will have to be determined initially by an inspector, and if a party disagrees with the inspector's decision, ultimately by the Board should a timely appeal from the decision be filed.

COURT PROCEEDINGS

2837-07-U; 2838-07-OH (Court File No. 147/09) Donald Amodeo -and- Ontario Ministry of Labour (Her Majesty in Right of Ontario), Attorney General of Ontario, Grievance Settlement Board, Ontario Public Service Employees Union and Ontario Labour Relations Board

Delay – Duty of Fair Representation – Health and Safety – Judicial Review – Settlement – The applicant sought review of two Board decisions, one dismissing a s. 74 complaint, and the second dismissing a s. 50 OHSA application in favour of an ongoing proceeding before the Grievance Settlement Board – The matter was settled at the GSB, and the applicant asked the Court to set aside the Minutes of Settlement (MOS) – The Court found there was no evidence of the applicant's diminished capacity during the GSB proceeding, so the MOS was fatal to his claim – In addition the MOS was not a reviewable decision – The applications for review of the Board rulings were dismissed for delay

Board decisions not reported.

Superior Court of Justice (Divisional Court), Jennings, Lederman and Dambrott JJ., March 15, 2010

DAMBROT J. (ORALLY)

[1] Donald Amodeo brings this application to review two decisions of the Ontario Labour Relations Board ("OLRB") dated February 6, 2008 and April 28, 2008. He also requests that the

Court "set aside" a Memorandum of Settlement ("MOS"), reached and executed at the Grievance Settlement Board ("GSB") on April 29, 2008.

[2] Paragraph 7 to 9 of the MOS read as follows:

> 7. In consideration of the foregoing, the Grievor and Union release and forever discharge the Employer, and its employees and agents, from all actions, causes of action, claims, grievances, privacy, complaints/requests and demands of every nature and kind arising out of or as a result of the above mentioned grievances, including but not limited to claims arising out of the *Human Rights Code*, the *Occupational Health and Safety Act*, the *Employment Standards Act*, the *Crown Employees Collective Bargaining Act*, the *Ontario Labour Relations Act*, the *Public Service of Ontario Act, 2006* and the *Ombudsman's Act*.
>
> 8. The Grievor agrees that these Minutes of Settlement represent a final settlement of all issues between the parties and that he has no further related employment rights or entitlements with the Employer, other than those specifically provided for in this agreement.
>
> 9. The Grievor acknowledges that he fully understands the terms of this settlement and voluntarily accepts its terms after having had the benefit of Union counsel.

[3] The applicant submits that he was forced to go before the GSB when what he desired was a hearing before the OLRB and that he signed the MOS while he was impaired by reason of taking medication. There is no medical evidence before us that would support his claim that he was under diminished capacity at anytime during the proceedings before the GSB. As a result, the MOS is fatal to his claim. In any event, as the MOS is not a decision, we have no jurisdiction to set it aside or otherwise review it.

[4] The Ministry and the Union also submitted that we should not hear the application to review the OLRB decisions because of inordinate delay in bringing and perfecting this application for judicial review. We agree.

[5] There was a delay of eleven months after the MOS was executed in bringing the application and a further seven months delay before it was perfected. This Court has held that applications for judicial review are to be commenced expeditiously and has exercised the power to dismiss an application on the basis of undue delay:

> "...the Divisional Court has held on numerous occasions that delay on the part of an applicant of six or more months in the commencement of an application and/or twelve months in the perfection of an application could be serious enough alone to warrant the dismissal of the application". (*Bettes v. Boeing Canada/Dehavilland*, [2000] O.J. No. 5413 (Div. Ct.) at para.7).

[6] The length of delay in this case well exceeds any reasonable limit. Furthermore, the record discloses no evidence of any reasonable explanation for the delay and in particular, as I have stated, no medical evidence of incapacity or impairment. Moreover, this Court has stated that judicial

review of OLRB decisions should proceed expeditiously because certainty is particularly important in labour disputes (see *Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers v. International Union of Bricklayers and Allied Craftworkers* 2003 CanLII 34378 (ON S.C.D.C.), (2003), 172 O.A.C. 156 (Div. Ct.) at para. 10).

[7] Accordingly, the application is dismissed. No costs are demanded and no costs are ordered.

JENNINGS J.

[8] I endorse the back of the Application Record: "The application is dismissed for oral reasons of the Court delivered today. No costs are demanded and none are ordered."

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING FEBRUARY 2010

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1516-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 450477 Ontario Ltd. Chartrand Equipment (Respondent)

Unit: "all construction labourers in the employ of 450477 Ontario Ltd. Chartrand Equipment in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of 450477 Ontario Ltd. Chartrand Equipment in all sectors of the construction industry within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (16 employees in unit)

0973-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Thorium Contracting Limited (Respondent)

Unit: "all construction labourers in the employ of Thorium Contracting Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Thorium Contracting Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

1969-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Versalab Inc. and/or Versalab 2007 Inc. (Respondent)

Unit: "all other affiliated bargaining agents of the United Brotherhood of Carpenters and Joiners of America and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America in respect of all carpenters and carpenters' apprentices in the employ of Versalab Inc. and/or Versalab 2007 Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Versalab Inc. and/or Versalab 2007 Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

3274-09-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Martin Laprade and 7247591 Canada Inc. o/a ML Electric (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Martin Laprade and 7247591 Canada Inc. o/a ML Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the

employ of Martin Laprade and 7247591 Canada Inc. o/a ML Electric in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3380-09-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. S.H.M. Contracting & Consulting Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of S.H.M. Contracting & Consulting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of S.H.M. Contracting & Consulting Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

3389-09-R: The International Union of Painters and Allied Trades, Local 1891 (Applicant)v. Blue White Painting Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Blue White Painting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Blue White Painting Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3042-09-R: The Ontario Nurses' Association (Applicant) v. Meadow Park (London) Inc. (Respondent)

Unit: "all Registered Nurses and Nurses with a temporary certificate of registration employed in a nursing capacity by Meadow Park (London) Inc. in the City of London, save and except supervisors, staff educators, wellness managers and persons above the rank of supervisor" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	8
Number of ballots segregated and not counted	2

3043-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. McIntosh Limousine Service Ltd., Air Cab Limousine Services (1985) Limited and AAroport Limousine Services Ltd. (Respondent)

Unit: "all dependant contractors of McIntosh Limousine Services Ltd., Air Cab Limousine Services (1985) Limited and AAroport Limousine Services Ltd. in their limousine services, operating in and out of the City of Toronto, Regional Municipalities of York and Peel, save and except supervisors, persons above the rank of supervisor, inspectors, dispatchers, multi-plate/multi-car owners or lessees office and clerical employees" (199 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	199
Number of persons who cast ballots	185
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	178
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	152
Number of ballots marked against applicant	25
Number of ballots segregated and not counted	7

3045-09-R: Workers United Ontario Council (Applicant) v. John Forsyth Shirt Company Limited (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of John Forsyth Shirt Company Ltd. of Cambridge, save and except Supervisors, Chief Engineer, Chief Engineers, Office and Sales Staff, Laboratory and Formation Technicians, Industrial Engineers, Product Development, Quality Control, Security, Data Entry and other salaried personel, Gerber marker maker, Sewing Machine fixers" (99 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	97
Number of persons who cast ballots	51
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	51
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	46
Number of ballots marked in favour of intervener	4

3085-09-R: Ontario Nurses' Association (Applicant) v. Waasegiizhig Nanaandawe'iyewigamig (Respondent)

Unit: "all registered practical nurses, registered nurses, nurses with Temporary Certificate of Registration engaged in a nursing capacity, registered nurses - extended class and registered dieticians employed by Waasegiizhig Nanaandawe'iyewigamig in the City of Kenora and at certain First Nations of Grand Council Treaty #3, save and except the program managers and persons above the rank of program manager" (11 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	21

3093-09-R: Christian Labour Association of Canada (Applicant) v. The Hartford Retirement Centre o/b 7965258 Ont. Inc. c.o.b. Chartwell Seniors Housing REIT, The Hartford Retirement Centre (Respondent)

Unit: "all employees of 7965258 Ont. Inc. c.o.b. as the Hartford Retirement Centre in the township of South Dundas save and except supervisors, those above the rank of supervisors, clerical and maintenance staff." (25 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

3123-09-R: Workers United Ontario Council (Applicant) v. Tiercon Corp. (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees employed in the City of Hamilton and in the former Tiercon operation located within the plant at 901 Simcoe St South, in the City of Oshawa save and except Forepersons/Supervisors, persons above the rank of Forepersons/Supervisor, office, maintenance, technical and agency staff, skilled trades and persons regularly employed for not more than twenty-four (24) hours per week" (95 employees in unit)

Number of names of persons on revised voters' list	97
Number of persons who cast ballots	79
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	79
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	74
Number of ballots marked in favour of intervener	3

3141-09-R: International Association of Machinists and Aerospace Workers (Applicant) v. Northampton Inn Oakville Inc. o/a Country Inn by Carlson (Respondent)

Unit: "all employees of Northampton Inn Oakville Inc. o/a Country Inn by Carlson, in the Town of Oakville, save and except supervisors, persons above the rank of supervisor, front desk, office and sales staff" (10 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

3154-09-R: Workers United Ontario Council (Applicant) v. Sodexho MS Canada Ltd. (Columbia International College) (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of Sodexho MS Canada Limited employed at Columbia International College in Hamilton, Ontario save and except supervisors, persons above the rank of supervisor and office and clerical staff" (71 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	71
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	39
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	36
Number of ballots marked in favour of intervener	3
Number of ballots segregated and not counted	0

3156-09-R: Workers United Ontario Council (Applicant) v. WoodGreen Community Services (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees of the WoodGreen Community Services of Toronto, in the City of Toronto save and except: Assistant Supervisors and Managers; Persons above the rank of Assistant Supervisors and Managers; Executive Assistant to the President; Co-ordinator of Transportation and Food Programs'; Co-ordinator of Supportive Housing; Co-ordinator of Homemaking; Volunteer Services Co-ordinator; Network Administrator; Accounting Administrator; Payroll Administrator; Co-ordinator of Homemaking and Client Services; Administrative Co-ordinator Employment and Training; Planning Assistant; Fund Development Assistants; Intern students and persons placed by WoodGreen Community Centre of Toronto with other Employers, for the purposes of job training" (413 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	427
Number of persons who cast ballots	218
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	215
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	204
Number of ballots marked in favour of intervener	12
Number of ballots segregated and not counted	1

3192-09-R: Teamsters Local Union No. 419 (Applicant) v. BFI Canada Inc. (Respondent)

Unit: "all employees of BFI Canada Inc., working as mechanics and welders in the City of Vaughan including maintenance, excluding supervisors, persons above the rank of supervisor, office, clerical, sales staff, and those employees covered under a subsisting Collective Agreement" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3195-09-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Women's Shelter, Saakaate House Inc. (Respondent)

Unit: "all employees of Women's Shelter, Saakaate House Inc., in the City of Kenora, save and except Executive Director, Persons above the rank of Executive Director, Bookkeeper, Confidential Secretary and Case Manager" (16 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

3199-09-R: International Union of Operating Engineers (IUOE), Local 772 (Applicant) v. Canadian Bank Note Company Limited (Respondent)

Unit: "all bookbinder employees of the Canadian Bank Note Company Limited employed in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, and all employees in other bargaining units as those bargaining units existed on January 28, 2010, for which any trade union holds existing bargaining rights" (34 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

3207-09-R: Workers United Ontario Council (Applicant) v. Tiercon Corp. (Respondent) v. UNITE HERE (Intervener)

Unit: "all employees employed at 352 Arvin Avenue, Stoney Creek, Ontario, save and except Forepersons/Supervisors, persons above the rank of Foreperson/Supervisor, office, maintenance, technical and agency staff, skilled trades and persons regularly employed for not more than twenty-four (24) hours per week" (75 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	71
Number of persons who cast ballots	71
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	66
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	2

Number of ballots marked in favour of applicant	56
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	0

3250-09-R: Workers United Ontario Council (Applicant) v. Giovanni Caboto Club (Respondent) v. UNITE HERE (Intervener)

Unit: "all bartenders, waiters, waitresses, and janitors with the licensed premises, licensed premises being the members' lounge" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	7

3296-09-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Aramark Canada Ltd. (Respondent)

Unit: "all employees of Aramark Canada Ltd. at 333 Sherbourne Avenue, Toronto, Ontario, save and except facilities manager, persons above the rank of facilities manager, office, sales and clerical staff" (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

2422-09-R: Labourers' International Union of North America, Local 625 (Applicant) v. Geotap Energy Inc. (Respondent)

3239-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Moscone Tile Ltd. (Respondent)

3240-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Premier Contractors Ltd. (Respondent)

3241-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Rockford Tile (Respondent)

3242-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Sterling Tile & Carpet (Respondent)

3243-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Gem-Campbell Terrazzo Tile (Respondent)

3244-09-R: Brick and Allied Craft Union of Canada (Applicant) v. Metric Tile Ltd. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

2718-08-R: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. Dalron Construction Limited, Dalron Construction, 1717 Paris St. Inc., Paris-Maki Holdings Ltd., Dalron Group Limited, Dalron Commonholds Limited, Dalron Leasing Limited, Dalron Investments Inc. (Respondents)

Unit: "all construction labourers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of the responding party in all other sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non working foreman" (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

1189-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Gedco Excavating Ltd. (Respondent)

Unit: "all construction labourers in the employ of the responding party in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining" (3 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

2608-09-R: Sheet Metal Workers' International Association, Local Union No. 285 (Applicant) v. Dearie Contracting Ottawa Inc. (Respondent)

Unit: "all sheet metal workers and sheet metal workers' apprentices in the employ of the responding party in the City of Ottawa and the United Counties of Prescott and Russell, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (14 employees in unit)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	20
Number of ballots segregated and not counted	0

2686-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Bel-Air Excavating & Grading Ltd. (Respondent)

Unit: "all construction labourers in the employ of Bel-Air Excavating & Grading Ltd. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

3055-09-R: Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. Chartwell Classic Amherstburg (Respondent)

Unit: "all employees employed by Chartwell Classic Amherstburg at 681 Front Road South in the City of Amherstburg, save and except the Supervisors and those above the rank of Supervisor" (34 employees in unit)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	1

3058-09-R: Service Employees International Union Local 2, Brewery, General and Professional Workers Union (Applicant) v. The Corporation of the Township of North Glengarry (Respondent)

Unit: "all employees of The Corporation of the Township of North Glengarry, save and except supervisors, those above the rank of supervisor and any employees for whom another trade union holds bargaining rights" (12 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	
Number of segregated ballots cast by persons whose names do not appear on voters' list	
Number of spoiled ballots	
Number of ballots marked in favour of applicant	
Number of ballots marked against applicant	

Number of ballots segregated and not counted	

3099-09-R: Canadian Office and Professional Employees Union Local 343 (Applicant) v. Les Centres d'Accueil Héritage (Respondent)

Unit: "all employees employed by Les Centres d'Accueil Héritage in the City of Toronto, save and except the Financial Officer and the Chief Executive Office and those persons above the rank of the Financial Officer and the Chief Executive Officer." (33 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	
Number of segregated ballots cast by persons whose names do not appear on voters' list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	3

3273-09-R: Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Pepsi Bottling Group (Canada) Co. (Respondent)

Unit: "all merchandisers and office/clerical staff of Responding Party working in and out of the Greater City of Sudbury, Ontario and the City of North Bay, Ontario save and except supervisors and forepersons, those above the rank of supervisor and foreperson and sales representatives." (8 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

Applications for Certification Withdrawn

0956-08-R: Plumbers Residential Council of Ontario (Applicant) v. Plumbtech Plumbing Inc. (Respondent)

1251-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. The Ron Boyko Group Inc. o/a RGB Inc., RBG Environmental Inc. (Respondents) v. International Union of Painters and Allied Trades, Local 1891 (Intervener)

0246-09-R: Labourers' International Union of North America, Local 625 (Applicant) v. M.R. Dunn Contractors Ltd., M.R. Dunn Holdings Ltd., and M.R. Dunn Management Co. Ltd. (Respondents) v. International Union of Operating Engineers, Local 793 (Intervener)

2901-09-R: United Food & Commercial Workers, Local 206 (Applicant) v. 22009999 Ontario Inc. c.o.b. as Swiss Chalet (Burlington) (Respondent)

3111-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. McGee Motors Ltd. (Respondent)

3162-09-R: International Union, Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Arctic Heating and Cooling Appliance Repairs (Respondent)

3264-09-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Auto Warehouse Company Canada Limited AKA: Gen-Auto Shippers (Respondent) v. Teamsters Local Union 938 (Intervener)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1927-02-R: Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. 492215 Ontario Limited, 636002 Ontario Inc., DFC Mechanical Contractors Ltd., Prairie Plumbing Ltd., Perry Fuels Inc., Perry Mechanical Inc., DFC Developments Sandbourne Inc., DFC Developments Scugog Inc., DFC Mechanical Contractors (2000) Ltd., Diamond Head Industrial Mall Inc., 821120 Ontario Inc. c.o.b. as Heritage M & E, Heritage Mechanical-Electrical and/or Heritage Mechanical (Respondents) *(Dismissed)*

1291-08-R: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Cumberland Interior Ltd. and, 1436937 Ontario Inc. c.o.b. as DRS Construction (Respondents) *(Withdrawn)*

1843-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Amica Mature Lifestyles Inc. and/or, Amica (Whitby) Inc. and/or, Cirrus Contracting Limited, a Division of 1064069 Ontario Limited (Respondents) *(Withdrawn)*

1126-09-R: International Union of Painters and Allied Trades, Local 1819, Glaziers (Applicant) v. 1198934 Ontario Inc., 1660720 Ontario Inc., 1568278 Ontario Inc. (Respondents) *(Withdrawn)*

1558-09-R: La Fédération des enseignantes et enseignants des écoles secondaires de l'Ontario (Applicant) v. Le Conseil scolaire catholique du Nouvel-Ontario and the, Dubreuilville Roman Catholic Seperate School Board (Respondents) v. L'Association des enseignantes et des enseignants franco-ontariens (AEFO), Le Syndicat canadien de la function publique, Filiale 4274, C.C.T. (Interveners) *(Granted)*

1563-09-R: The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Superior-Greenstone District School Board and, The Nakina District School Area Board (Respondents) *(Endorsed Settlement)*

1716-09-R: Hillel Academy Teachers' Association (Applicant) v. Hillel Academy of Ottawa, Yitzhak Rabin High School, Ottawa Talmud Torah Afternoon School and, Ottawa Jewish Community School (Respondents) *(Withdrawn)*

2538-09-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Westwood Drywall Inc., Argo Drywall Inc., Whitmore Interiors Inc. (Respondents) *(Dismissed)*

2748-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Richard York c.o.b. as Underwater Construction Specialists (an unregistered business name), M.C. Marine Inc. (Respondents) *(Withdrawn)*

SALE OF A BUSINESS

1927-02-R: Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. 492215 Ontario Limited, 636002 Ontario Inc., DFC Mechanical Contractors Ltd., Prairie Plumbing Ltd., Perry Fuels Inc., Perry Mechanical Inc., DFC Developments Sandbourne Inc., DFC Developments Scugog Inc., DFC Mechanical Contractors (2000) Ltd., Diamond

Head Industrial Mall Inc., 821120 Ontario Inc. c.o.b. as Heritage M & E, Heritage Mechanical-Electrical and/or Heritage Mechanical (Respondents) *(Dismissed)*

1291-08-R: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Cumberland Interior Ltd. and, 1436937 Ontario Inc. c.o.b. as DRS Construction (Respondents) *(Withdrawn)*

1843-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Amica Mature Lifestyles Inc. and/or, Amica (Whitby) Inc. and/or, Cirrus Contracting Limited, a Division of 1064069 Ontario Limited (Respondents) *(Withdrawn)*

1126-09-R: International Union of Painters and Allied Trades, Local 1819, Glaziers (Applicant) v. 1198934 Ontario Inc., 1660720 Ontario Inc., 1568278 Ontario Inc. (Respondents) *(Withdrawn)*

1558-09-R: La Fédération des enseignantes et enseignants des écoles secondaires de l'Ontario (Applicant) v. Le Conseil scolaire catholique du Nouvel-Ontario and the, Dubreuilville Roman Catholic Seperate School Board (Respondents) v. L'Association des enseignantes et des enseignants franco-ontariens (AEFO), Le Syndicat canadien de la function publique, Filiale 4274, C.C.T. (Interveners) *(Granted)*

1563-09-R: The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Superior-Greenstone District School Board and, The Nakina District School Area Board (Respondents) *(Endorsed Settlement)*

1716-09-R: Hillel Academy Teachers' Association (Applicant) v. Hillel Academy of Ottawa, Yitzhak Rabin High School, Ottawa Talmud Torah Afternoon School and, Ottawa Jewish Community School (Respondents) *(Withdrawn)*

2538-09-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Westwood Drywall Inc., Argo Drywall Inc., Whitmore Interiors Inc. (Respondents) *(Dismissed)*

2748-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Richard York c.o.b. as Underwater Construction Specialists (an unregistered business name), M.C. Marine Inc. (Respondents) *(Withdrawn)*

UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

2786-09-R: Canadian Union of Public Employees (Applicant) v. UNITE HERE, Compass Group Canada (Respondents) *(Granted)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

1117-09-R: Colin Walters (Applicant) v. Specialty and Temporary Employees Union (Respondent) *(Dismissed)*

1546-09-R: Glen Pilgrim & a group of employees of Morgan Scott (Applicant) v. United Food and Commercial Workers Canada Locals 175 and 633 (Respondent) v. Morgan Scott Partnership (Intervener) *(Granted)*

Unit: "all employees of the Morgan Scott Partnership, located at 1700 Drew Road in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff." (19 employees in unit)

2876-09-R: Labourers' International Union of North America Local 183 and Formwork Council of Ontario (Applicant) v. Carpenters Union, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America and/or Carpenters Local 1030, Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America (Respondent) v. Long Valley Forming Limited and/or Long Valley Construction Limited (Intervener) *(Withdrawn)*

3103-09-R: Lucia Rae Puls (Applicant) v. Canadian Office and Professional Employees' Union Local 454 (Respondent) v. Women's Shelter, Saakaate House Inc. (Intervener) *(Granted)*

Unit: "all employees in the City of Kenora save and except executive director, persons above the rank of director, bookkeeper, confidential secretary and case manager." (19 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	12
Number of ballots segregated and not counted	0

3188-09-R: Lynn Tormey (Applicant) v. Service Employees International Union, Local 1, Canada (Respondent) v. Mental Health Support Network South Eastern Ontario Corporation (Intervener) *(Dismissed)*

3222-09-R: Michael Dean Bengert (Applicant) v. International Association of Machinists and Aerospace Workers District Lodge 78 (Respondent) v. Ingersoll Rand (Intervener) *(Granted)*

3300-09-R; 3320-09-R; 3339-09-R: Joel Biro (Applicant) v. International Brotherhood of Electrical Workers Local 105 and The International Brotherhood of Electrical Workers Construction Council of Ontario (Respondent); Joel Biro (Applicant) v. International Brotherhood of Electrical Workers Locals 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687, 1739 and the International Brotherhood of Electrical Workers Construction Council of Ontario (Respondent) *(Withdrawn)*

3445-09-R: Monte Shivaharan, Paula Cardoso (Applicant) v. United Steelworkers, District 6 (Respondent) v. Acer America Corporation (Intervener) *(Granted)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

1514-06-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 450477 Ontario Ltd. Chartrand Equipment (Respondent) *(Granted)*

3369-08-U: Schneider Employees' Association (Applicant) v. Maple Leaf Consumer Foods Inc. (Respondent) *(Endorsed Settlement)*

0584-09-U: Ontario Public Service Employees Union (Applicant) v. ANAGO (Non) Residential Resources Inc. (Respondent) *(Withdrawn)*

0851-09-U: Canadian Union of Public Employees and its Locals 82 and 543 (Applicant) v. The Corporation of the City of Windsor (Respondent) *(Dismissed)*

0869-09-U: Douglas Robert Newman (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local Union No. 2486 (Respondent) v. D-Thirteen Corporation (Intervener) *(Dismissed)*

0870-09-U: Elzbieta Olszewska (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) Local 1998 (Respondent) v. The Governing Council of the University of Toronto (Intervener) *(Dismissed)*

1187-09-U: Ilario Filice (Applicant) v. CAW TCA Canada Local 1120 (Respondent) v. Sault Area Hospital (Intervener) *(Dismissed)*

1354-09-U: Shameeza Rahaman (Applicant) v. Canadian Union of Public Employees and its Local 2191 (Respondent) v. Community Living Toronto (Intervener) *(Withdrawn)*

1508-09-U; 2648-09-U; 2649-09-U: Yuk Ling Lau (Applicant) v. Canadian Union of Public Employees and its Local 3155 (Respondent) v. Toronto Catholic District School Board (Intervener); Yuk Ling Lau (Applicant) v. Toronto Catholic District School Board (Respondent) v. Canadian Union of Public Employees and its Local 3155 (Intervener) *(Dismissed)*

1875-09-U: Santo Barbieri (Applicant) v. The Ontario Secondary School Teachers' Federation (Respondent) *(Withdrawn)*

1915-09-U: Mario Pessoa De Oliveira (Applicant) v. Sunnybrook Health Science Centre (Respondent) v. Service Employees International Union Local 1 Canada (Intervener) *(Dismissed)*

2156-09-U: United Food & Commercial Workers, Local 206 (Applicant) v. Machell Park Inc. o/a Howard Johnson Hotel (Respondent) *(Withdrawn)*

2307-09-U: Ontario Nurses' Association (Applicant) v. Sudbury & District Health Unit (Respondent) *(Withdrawn)*

2347-09-U: Kashmira Patel (Applicant) v. United Steelworkers, Local 8694 (Respondent) v. Faurecia Automotive Seating Canada Ltd. (Intervener) *(Withdrawn)*

2362-09-U: Stephen Alexander Dubbin (Applicant) v. Canadian Union of Public Employees, Local One (Respondent) v. Toronto Hydro-Electric System Limited (Intervener) *(Withdrawn)*

2367-09-U: International Association of Machinists and Aerospace Workers (Applicant) v. Crown Hospitality Suites Inc. o/a Super 8 (Respondent) *(Withdrawn)*

2407-09-U: Canadian Union of Public Employees and its Local 4308 (Applicant) v. Street Health Community Nursing Foundation (Respondent) *(Withdrawn)*

2421-09-U: George J.Polihronakos (Applicant) v. CUPE and CUPE local 66 (Respondent) *(Withdrawn)*

2527-09-U: Canadian Union of Public Employees, Local 1287 (Applicant) v. Canadian Mental Health Association (Respondent) *(Withdrawn)*

2687-09-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Bel-Air Excavating & Grading Ltd. (Respondent) *(Withdrawn)*

2811-09-U: Chitrawattee Ramdahin (Applicant) v. United Steelworkers of America Local 8300 (Respondent) *(Withdrawn)*

2868-09-U: Canadian Union of Public Employees (Applicant) v. City of Temiskaming Shores (Respondent) *(Withdrawn)*

2877-09-U Labourers' International Union of North America Local 183 and Formwork Council of Ontario (Applicant) v. Carpenters Local, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America and/or Carpenters Local 1030, Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Long Valley Forming Limited and/or Long Valley Construction Limited (Respondents) *(Withdrawn)*

2878-09-U: Matthew Farrell (Applicant) v. International Union of Operating Engineers Local 793 (Respondent) *(Dismissed)*

2902-09-U: United Food & Commercial Workers, Local 206 (Applicant) v. 22009999 Ontario Inc. c.o.b. as Swiss Chalet (Burlington) (Respondent) *(Withdrawn)*

3034-09-U: Robert Taylor (Applicant) v. Northern Construction Union (Respondent) v. Pioneer Construction Inc. (Intervener) *(Withdrawn)*

3060-09-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. McGee Motors Ltd. (Respondent) *(Withdrawn)*

3117-09-U: William McBain (Applicant) v. The International Union of Painters and Allied Trades, Local Union 1904 (Respondent) *(Withdrawn)*

3231-09-U: Brick and Allied Craft Union of Canada, Local 4 (Applicant) v. 1448069 Ontario Ltd. c.o.b. Ontario Masonry and Concrete (Respondent) *(Granted)*

3260-09-U: Ayola Samuel (Applicant) v. UFCW Local 333 (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

2962-09-M: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Percon Construction Inc. (Respondent) v. Construction Workers Local 52 affiliated with the Christian Labour Association of Canada (Intervener) *(Granted)*

3059-09-M: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. McGee Motors Ltd. (Respondent) *(Withdrawn)*

3409-09-M: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Applicant) v. Saputo Bakery Inc. (Respondent) *(Terminated)*

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

2516-09-M: Chartwell - Heritage Glen (Applicant) v. Ontario Federation of Health Care Workers, LIUNA, Local 1110 (Respondent) *(Granted)*

3254-09-M: Dresden Industrial - Ridgetown (Applicant) v. United Food and Commercial Workers Canada, Local 175 (Respondent) *(Granted)*

JURISDICTIONAL DISPUTES

0642-09-JD: The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*

1089-09-JD: The Crown in Right of Ontario as represented by the Ministry of Government Services (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*

1223-09-JD; 1224-09-JD: Millwright Regional Council of Ontario and its Local 1007 (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 and, Aker Kvaerner Songer Canada Ltd. (Respondents) v. Electrical Power Systems Construction Association ("EPSCA") (Intervener); Millwright Regional Council of Ontario and its Local 1007 (Applicant) v. United Association

of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 and, E.S. Fox Ltd. (Respondents) v. Electrical Power Systems Construction Association ("EPSCA") (Intervener) *(Granted)*

1756-09-JD; 1963-09-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 759 (Applicant) v. International Brotherhood of Electrical Workers, Local 1687, Comstock Canada Ltd. (Respondents) v. Electrical Power Systems Construction Association (Intervener); International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 (Applicant) v. International Brotherhood of Electrical Workers, Local 1687, Comstock Canada Ltd. (Respondents) v. Electrical Power Systems Construction Association (Intervener) *(Dismissed)*

1845-09-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Millwrights Regional Council of Ontario and its Local 1007, Trade-Mark Industrial Inc. (Respondents) *(Withdrawn)*

2370-09-JD: Ontario Sheet Metal Workers' & Roofers' Conference (Applicant) v. Greater Ontario Regional Council of Carpenters and Allied Trades, United Brotherhood of Carpenters, Local Union 1946, Bondfield Construction Company Limited, Interior Co-ordinators (2000) Limited (Respondents) *(Terminated)*

2915-09-JD: Labourers' International Union of North America Local 183 (Applicant) v. Carpenters Union, Central Ontario Regional Council United Brotherhood of Carpenters and Joiners of America and or Carpenters Local 1030, Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, and Long Valley Forming Limited, Long Valley Forming Limited (Respondents) *(Withdrawn)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

1729-09-M: Ontario Nurses' Association (Applicant) v. Toronto East General Hospital (Respondent) *(Dismissed)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0925-09-OH: Robert Newby (Applicant) v. Bombardier Inc., Bombardier Aerospace (Respondent) *(Withdrawn)*

2120-09-OH: Chris Simpson (Applicant) v. Olameter Inc., London Hydro (Respondents) *(Withdrawn)*

2280-09-OH: Kevin Hogan (Applicant) v. E.C. King Contracting a division of Miller Paving Limited, Richard Foy (Respondents) *(Dismissed)*

2439-09-OH: Grey Eames (Applicant) v. CMC Crawford Metal Corporation (Respondent) *(Withdrawn)*

2597-09-OH: Whitney Jefferson Chappie (Applicant) v. G.W. Clarke Drainage Contractors Ltd., Darryl Clarke and Brian Rutherford (Respondent) *(Withdrawn)*

2772-09-OH: Saeedeh Chinichian (Applicant) v. Humber River Regional Hospistal (Respondent) *(Withdrawn)*

2800-09-OH: Jennifer Blackmore (Applicant) v. Mossco Esso (Respondent) *(Terminated)*

2946-09-OH: Diana Barr (Applicant) v. The Board of Directors of the Ausable Community Centre (Respondent) *(Endorsed Settlement)*

3084-09-OH: Cal Terpstra (Applicant) v. Grand River Transit (Respondent) *(Withdrawn)*

3095-09-OH: Carolyn Gordon (Applicant) v. Eden Hertzog c.o.b. as New Moon Kitchen (Respondent) *(Terminated)*

CONSTRUCTION INDUSTRY GRIEVANCES

2281-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Jeff's Mobile Welding Co. Ltd. o/a Mobile Welding (Respondent) *(Withdrawn)*

0802-09-G: Universal Workers Union, L.I.U.N.A., Local 183 (Applicant) v. Strong Foundation Inc. (Respondent) *(Dismissed)*

1127-09-G: The International Union of Painters and Allied Trades, Local 1819, Glazers (Applicant) v. 1660720 Ontario Inc. and, 1568278 Ontario Inc. (Respondents) *(Withdrawn)*

1586-09-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Canadian Independent Sodding Limited carrying on business as Canadian Independent Sod (Respondent) *(Withdrawn)*

1844-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local 736 (Applicant) v. Trade-Mark Industrial Inc. (Respondent) *(Withdrawn)*

2171-09-G: United Brotherhood of Carpenters & Joiners of America, Local Union 494 (Applicant) v. Icon Constructors Inc. (Respondent) *(Withdrawn)*

2250-09-G: Brick and Allied Craft Union of Canada, Local 28 (Applicant) v. RHI Canada Inc. (Respondent) *(Terminated)*

2328-09-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. 1457601 Ontario Inc. c.o.b. as A & D Enterprise 2001 and, Paul LeFebvre (Respondents) *(Endorsed Settlement)*

2436-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Johnson Controls LP (Respondent) *(Withdrawn)*

2553-09-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Dismissed)*

2749-09-G: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. M.C. Marine Inc. (Respondent) *(Withdrawn)*

2770-09-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Long Valley Forming Limited and or, Long Valley Construction Limited (Respondents) *(Withdrawn)*

2779-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Edge Mechanical Inc. (Respondent) *(Withdrawn)*

2823-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 787 (Applicant) v. The Plan Group Inc. and or, Delta Mechanical Ltd. (Respondents) *(Withdrawn)*

2880-09-G; 2881-09-G; 3232-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Nova Fire Safety Inc. (Respondent) *(Withdrawn)*

2889-09-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Lorcon 2000 Contracting Ltd. (Respondent) *(Granted)*

2919-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrastone Construction Inc. and, Ron Colucci (Respondents) *(Endorsed Settlement)*

2951-09-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. K's Insulation Ltd. (Respondent) *(Granted)*

2967-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Copeland Sub-Contracting Inc. (Respondent) *(Endorsed Settlement)*

2994-09-G: Brick and Allied Craft Union of Canada, Local 28 (Applicant) v. A & A Bricklayers (Respondent) *(Terminated)*

3005-09-G: International Brotherhood of Electrical Workers, Electrical Power Council of Ontario (Applicant) v. Aecon Industrial Division of Aecon Group Inc. (Respondent) *(Withdrawn)*

3067-09-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Canadian Independent Sodding Limited carrying on business as Canadian Independent Sod (Respondent) *(Withdrawn)*

3102-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. T C Contracting Inc. (Respondent) *(Granted)*

3122-09-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Pro Glass Services Inc. (Respondent) *(Granted)*

3127-09-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Bassi Construction & Masonry Ltd. (Respondent) *(Granted)*

3131-09-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Edward C. Kosciuch c.o.b. as All City Drywall & Acoustics / All City Drywall and Acoustics Inc. (Respondent) *(Granted)*

3132-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. Triform (1371103 Ontario Inc.) (Respondent) *(Granted)*

3140-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 463 (Applicant) v. Multiwide Mechanical Contractors Ltd. (Respondent) *(Endorsed Settlement)*

3142-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Base Electric Inc. (Respondent) *(Withdrawn)*

3143-09-G; 3144-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 1086289 Ontario Inc. c.o.b. as Urban Electrical Contractors (Respondent) *(Withdrawn)*

3147-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. PSC Civil Construction 2075064 Ontario Ltd. (Respondent) *(Granted)*

3148-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. PSC Civil Construction 2075064 Ontario Ltd. (Respondent) *(Granted)*

3158-09-G: International Brotherhood of Electrical Workers, Local Union 105 (Applicant) v. Weinmann Electric Ltd. (Respondent) *(Withdrawn)*

3161-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. PCL Constructors Canada Inc. (Respondent) *(Withdrawn)*

3230-09-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Casal Metal Ltd. (Respondent) *(Granted)*

3238-09-G: Sheet MetaL Workers' International Association, Local 473 (Applicant) v. Roadrunner General Installation (Respondent) *(Granted)*

3251-09-G: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Menuiserie Pierre Lechantre Architectural Inc. (Respondent) *(Endorsed Settlement)*

3252-09-G: Brick and Allied Craft Union of Canada, Local 4 (Applicant) v. 1448069 Ontario Ltd. c.o.b. Ontario Masonry and Concrete (Respondent) *(Granted)*

3255-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. PSC Civil Construction / 2075064 Ontario Limited (Respondent) *(Granted)*

3256-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. PSC Civil Construction / 2075064 Ontario Limited (Respondent) *(Granted)*

3257-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. PSC Civil Construction / 2075064 Ontario Limited (Respondent) *(Granted)*

3265-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Gridd Electrical Services Inc. (Respondent) *(Withdrawn)*

3266-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Gridd Electrical Services Inc. (Respondent) *(Endorsed Settlement)*

3267-09-G: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Controltech Electrical Inc. (Respondent) *(Endorsed Settlement)*

3270-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 1405992 Ontario Inc. c.o.b. as Advance Electric Company (Respondent) *(Granted)*

3271-09-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 1405992 Ontario Inc. c.o.b. as Advance Electric Company (Respondent) *(Withdrawn)*

3294-09-G: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Comstock Canada Ltd. (Respondent) *(Withdrawn)*

3312-09-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. Al Gordon Electric Limited (Respondent) *(Withdrawn)*

3359-09-G: Sheet Metal Workers' International Association Local 30 (Applicant) v. Weston Sheet Metal, a Division of Lung Metal Products (Respondent) *(Granted)*

3368-09-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Aecon Industrial (Respondent) *(Withdrawn)*

3382-09-G: International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Medway Contracting Group Ltd., Medway Electric Ltd. and, I.C.E. Contracting Inc. (Respondents) *(Terminated)*

3406-09-G: Labourers' International Union of North America, Local 506 (Applicant) v. Van Horne Construction Ltd. (Respondent) *(Withdrawn)*

3412-09-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 2222, Local 2486 hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Carica Construction Inc. (Respondent) *(Granted)*

3413-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrastone Construction Inc. (Respondent) *(Granted)*

APPEALS - EMPLOYMENT STANDARDS ACT

0384-06-ES: Ahti Tolvanen (Applicant) v. Dundee Private Investors Management Inc., Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0127-09-ES: 2140084 Ontario Inc. o/a Estheticare Spa of Essex Inc. (Applicant) v. Lilly Mergl and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0613-09-ES: Halla Climate Control Canada Inc. (Applicant) v. Stephen McGowan and, Director of Employment Standards (Respondents) *(Dismissed)*

0964-09-ES: Mui Wong (Applicant) v. Antamex International Inc. and, Director of Employment Standards (Respondents) *(Withdrawn)*

1332-09-ES: Canadian Red Cross (Applicant) v. Barbara Hohmann and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1375-09-ES: Gessesse Zeamanuel (Applicant) v. 1583751 Ontario Limited o/a B.A.S.R. Ltd./Avcan Management Inc., Director of Employment Standards (Respondents) *(Dismissed)*

1436-09-ES: Fitness Plus (Applicant) v. Sandra McPherson and, Director of Employment Standards (Respondents) *(Dismissed)*

1469-09-ES: Playtime Daycare Centre (Applicant) v. Bobbi-Jo Miller and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1691-09-ES: Mina Benedetti (Applicant) v. Heat-Air Mechanical Services Inc., and, Director of Employment Standards (Respondents) *(Granted)*

1761-09-ES: 663605 Ontario Limited o/a The Guardian Eagle Resort (Applicant) v. Rylly O'Brien, and, Director of Employment Standards (Respondents) *(Withdrawn)*

1773-09-ES: Playtime Daycare Centre (Applicant) v. Stephanie Vanier and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1820-09-ES: Rashmi Arya (Applicant) v. Club Par Excellance Inc., and, Director of Employment Standards (Respondents) *(Dismissed)*

1855-09-ES: Playtime Daycare Centre (Applicant) v. Sagal Hassan and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1879-09-ES: First Intelligence Corporation o/a Brendan Wood International (Applicant) v. Kimberly Laidis and, Director of Employment Standards (Respondents) *(Dismissed)*

1890-09-ES: Ernest Woodman (Applicant) v. Certified Energy Solutions Inc. and, Director of Employment Standards (Respondents) *(Terminated)*

1908-09-ES: Kersey Gandevia (Applicant) v. Magiq School Busing and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2035-09-ES; 2036-09-ES; 2038-09-ES; 2040-09-ES; 2041-09-ES; 2042-09-ES; 2045-09-ES; 2046-09-ES; 2047-09-ES; 2048-09-ES; 2049-09-ES: Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Dillon Potter and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Dave Pound and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Mary C. Campbell and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Trenton D. Haye and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. James E. Mills and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Jason D. Hayes and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Adam Ben-Miloud and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Jeremy M. Briere and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. David J. Sutherland and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Lisa Badgley and, Director of Employment Standards (Respondents); Mafalda Decristoforo, a Director of 6664091 Canada Inc. operating as Barolo Buffet (Applicant) v. Hoang K. Dinh and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2085-09-ES: Ahmed Abdelouahab (Applicant) v. Unique Restorations Ltd. and, Director of Employment Standards (Respondents) *(Dismissed)*

2088-09-ES: Miska Trailers (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

2101-09-ES: 663605 Ontario Limited o/a The Guardian Eagle Resort (Applicant) v. Rhonda O'Brien, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2107-09-ES: 663605 Ontario Limited o/a The Guardian Eagle Resort (Applicant) v. Stephen O'Brien, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2111-09-ES: Harold Craig Hillard (Applicant) v. PAI Canada Inc., Director of Employment Standards (Respondents) *(Withdrawn)*

2119-09-ES: Susan Gaal, A Director of P.S. Shop at Home Service Inc. (Applicant) v. Charles Vanzanten, Clyde Childs, Amanda McCarten, Jasmine Newman, Brad Taylor and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2186-09-ES: 2166616 Ontario Inc. o/a Apple Jack's (Applicant) v. Julie Bryce and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2247-09-ES: Kokila Sharma (Applicant) v. Club Par Excellance Inc., and, Director of Employment Standards (Respondents) *(Granted)*

2278-09-ES: Shami Inayat (Applicant) v. A & V Granite Importers Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2281-09-ES: Cantex Canada Limited (Applicant) v. Puvanenthiran Yogeswary and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2311-09-ES: 1324474 Ontario Ltd. o/a Ontario Coachway (Applicant) v. Leonard Ball and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2325-09-ES: Gerrard Trueman Tuck, Director of 2024972 Ontario Inc. o/a Tuck's Professional Services (Applicant) v. Karen Campbell and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2353-09-ES: Lucia Dawson (Applicant) v. Arlyn Manzano, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2502-09-ES: Miguel Morillo (Applicant) v. A-1 Railings Ltd. and, Director of Employment Standards (Respondents) *(Dismissed)*

2532-09-ES: Micron Installations Limited (Applicant) v. Joe Bruno and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2550-09-ES: Jonathan Hamilton (Applicant) v. Phelps Homes Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2572-09-ES: Reva Foods Inc. (Applicant) v. Mark Murray and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2580-09-ES: Canada Centre Publications Inc. (Applicant) v. Chanpreet Jammu and, Director of Employment Standards (Respondents) *(Terminated)*

2584-09-ES: Brigitte Smith (Applicant) v. Lowe-Martin Company Inc. o/a The Lowe-Martin Group and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2665-09-ES: 1070377 Ontario Inc. o/a Nick's Courier (Applicant) v. Richard Brousseau and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2672-09-ES: Momi & Multani Veterinary Professional Corporation (Applicant) v. Karen Schroeder, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2713-09-ES: John Forestieri (Applicant) v. Moores Clothing For Men and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2723-09-ES: Peter R. Johannes (Applicant) v. Richard Robbins International Inc. and, Director of Employment Standards (Respondents) (Endorsed Settlement)

2729-09-ES: Nikki T. Reason (Applicant) v. CB Richard Ellis Limited and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2736-09-ES: Felix Young (Applicant) v. The Hospital for Sick Children and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2751-09-ES: Daynia Chan (Applicant) v. Match Sports International Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2763-09-ES: 1292159 Ontario Inc. o/a Lucky 7 Sports Bar (Applicant) v. Melissa Downer and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2827-09-ES: Georges Nemr Saikali operating as Fontenelle Restaurant (Applicant) v. Sharon Lamadeleine, and, Director of Employment Standards (Respondents) *(Terminated)*

2832-09-ES: 1670672 Ontario Limited o/a Elements Restaurant & Lounge (Applicant) v. Ralph Neri and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2862-09-ES: Canada Centre Publications Inc. (Applicant) v. Shubpreet Josan and, Director of Employment Standards (Respondents) *(Terminated)*

2864-09-ES: Top Grade Molds Ltd. (Applicant) v. Greg Finazzo, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2888-09-ES: Dr. Svec Institute of Psychological Services (Applicant) v. Adelle Knutt, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2890-09-ES: Monument Gibson (1996) S.E.N.C. a.k.a. Gibson Monuments of Thunder Bay (Applicant) v. Cindy Farno and, Director of Employment Standards (Respondents) *(Dismissed)*

2891-09-ES: Jackie's Alterations Crafts & More (Applicant) v. Pina Alves and, Director of Employment Standards (Respondents) *(Terminated)*

2925-09-ES: Lamplighter Inns (London) Limited o/a Best Western Guildwood Inn (Applicant) v. Pamela Hewgill and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2931-09-ES: Patrick Boake (Applicant) v. Emex Systems and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2934-09-ES: Metcap Living Management Inc. (Applicant) v. Edina Petrovic and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2971-09-ES: Paul Mallia (Applicant) v. Cozza Brothers Excavating Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2990-09-ES: Wojciech Siola (Applicant) v. Mario's Floor and, Director of Employment Standards (Respondents) *(Terminated)*

3018-09-ES; 3019-09-ES: Pomer & Boccia Professional Corporation (Applicant) v. Carlo Paura, and, Director of Employment Standards (Respondents); Pomer & Boccia Professional Corporation (Applicant) v. Roksana Deyhori, and, Director of Employment Standards (Respondents) *(Terminated)*

3024-09-ES: Susie McCullough (Applicant) v. Emblemtek Solutions Group Inc. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3053-09-ES: Jeff Sands and Jason Sands (Applicant) v. Nicole Cunha, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3089-09-ES: Terry Petrie, a Director of Ross Heating & Air Conditioning Inc. (Applicant) v. Jessica Fisher, and, Director of Employment Standards (Respondents) *(Terminated)*

3104-09-ES: Sitel Customer Care Inc. (Applicant) v. Lindsay Sheppard and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3119-09-ES: Teralynn Cunningham (Applicant) v. R. Doktor Investments Inc. o/a Tim Hortons, and, Director of Employment Standards (Respondents) *(Terminated)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

0483-09-HS: United Steelworkers of America, Local 9165 (Applicant) v. Barrick, Hemlo Operations, David Bell Mine, Arlaan Warren, Inspector (Respondents) *(Terminated)*

0506-09-HS: Xstrata Canada Corporation (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union (United Steelworkers), Local 2020, Rick Kulyski, Inspector, Canadian Auto Workers (CAW) Canada and its Local 598 (Respondents) *(Granted)*

1221-09-HS: Elementary Teachers' Federation of Ontario (Applicant) v. Ottawa-Carleton District School Board and, Joanne Noonan, Inspector (Respondents) *(Terminated)*

1740-09-HS: Hydro One Networks Inc. (Applicant) v. Power Workers' Union, Marcel Labelle, Inspector (Respondents) *(Withdrawn)*

2638-09-HS: Morrison Hershfield Managers Inc. (Applicant) v. McDonald Bros Construction Inc. and, Geoffrey James, Inspector (Respondents) *(Withdrawn)*

3025-09-HS: Diane Pouget (Applicant) v. Ontario Clean Water Agency and, T.S. Waraich, Inspector (Respondents) *(Dismissed)*

3054-09-HS: ReCool Canada Inc. (Applicant) v. Andrew Bonazzo, Bonnie Tittaferrante, Carol Ann Pedwysocki, Chester Heard, Cynthia Wall, David Shaw, Doug Bingham, Gary Klages, Gerard Mulvee, Glen Arsenault, Helen Trochimchuk, James R. Monteith, Jared Olson, Jeffrey Caldwell, John Nunn, Joseph Gray, Ken Jarvis, Kevin Porter, Levino Tittaferrante, Linda Quesnelle, Malcolm McLeod, Patrick Boyce, Robert Clark, Roger J. Morin, Shawn LeCocq, Steve Kozak, Steven Doherty, Wayne Lovering, William Mandziuk, Yvan Allard and, Al Gardiner, Inspector (Respondents) *(Withdrawn)*

3285-09-HS; 3286-09-HS: Richard Hall (Applicant) v. Daniel Beauchamp, Daniel Bourgon, Roy Weir, Inspector (Respondents) *(Dismissed)*

FIRST AGREEMENT - DIRECTION

2905-09-FC: International Union of Operating Engineers, Local 793 (Applicant) v. Rainbow Concrete Industries Ltd. (Respondent) *(Granted)*

REFERRAL FROM MINISTER (SECTION 115)

2338-09-M: Unite Here Local 75 (Applicant) v. 21947760 Ontario Inc. o/a Comfort Inn Meadowvale (Respondent) *(Withdrawn)*

2340-09-M: UNITE HERE Local 75 (Applicant) v. Pegasus Hospitality Corporation (Respondent) *(Withdrawn)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2687-08-U: John McKenney (Applicant) v. The Ontario Secondary School Teachers' Federation, District 26 (Respondent) v. Upper Canada District School Board (Intervener) *(Dismissed)*

3279-08-ES: Todor Pandeliev (Applicant) v. JDS Uniphase Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

2477-09-R: International Union of Elevator Constructors, Local 50 (Applicant) v. Atlantic Lifts Ltd. (Respondent) *(Dismissed)*

2643-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Long Valley Forming Limited (Respondent) v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Intervener) *(Dismissed)*

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MARCH 2010

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

2494-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Prime Design Build Corporation (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Prime Design Build Corporation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Prime Design Build Corporation in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3317-07-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Southend Drywall & Acoustics Ltd.(Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Southend Drywall & Acoustics Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Southend Drywall & Acoustics Ltd. in all sectors of the construction industry within a radius of 57 kilometres (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

0465-08-R: Labourers' International Union of North America, Local 625 (Applicant) v. The Network Group, a Division of 1522174 Ontario Ltd.(Respondent)

Unit: "all construction labourers in the employ of the responding party in all sectors of the construction industry excluding the industrial, commercial and institutional sector thereof in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0566-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. AON Builders Inc.(Respondent)

Unit: "all construction labourers in the employ of AON Builders Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of AON Builders Inc. in all sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1278-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Ferro Canada Inc.(Respondent)

Unit: "all construction labourers in the employ of Ferro Canada Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non working foreman all construction labourers in the employ of Ferro Canada Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (17 employees in unit)

2801-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Baiocco Construction Corp. and, Baiocco Development Corp.(Respondents)

Unit: "all construction labourers in the employ of Baiocco Construction Corp. and Baiocco Development Corp. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Baiocco Construction Corp. and Baiocco Development Corp. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

3621-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Consolidated Drilling and Blasting Inc.(Respondent)

Unit: "all construction labourers in the employ of Consolidated Drilling and Blasting Inc. in all sectors of the construction industry in the Town of Parry Sound, Township of Seguin Wasauksing First Nation (Parry Island), the Township of McDougal, the Township of McMurrich/Monteith, the Township of Spence, the Township of The Archipelago and the Township of Carling, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (5 employees in unit)

3676-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Alfidome Construction Limited (Respondent)

Unit: "all construction labourers in the employ of Alfidome Construction Limited in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

3722-09-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Modern Niagara HVAC Services Inc.(Respondent)

Unit: "all refrigeration and air conditioning mechanics and apprentice refrigeration and air conditioning mechanics in the employ of Modern Niagara HVAC Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and foreman all refrigeration and air conditioning mechanics and apprentice refrigeration and air conditioning mechanics in the employ of Modern Niagara HVAC Services Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell; the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville and; the United Counties of Stormont, Dundas and Glengarry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

3822-09-R: International Union of Operating Engineers, Local 793 (Applicant) v. Baiocco Construction Corp., Baiocco Development Corp.(Respondents)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Baiocco Construction Corp.and Baiocco Development Corp. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Baiocco Construction Corp. and Baiocco Development Corp. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3516-07-R: United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Intrepid General Limited (Respondent) v. Construction Workers, Local 53, affiliated with Christian Labour Association of Canada (Intervener)

Unit: "all carpenters and carpenters' apprentices in the employ of Intrepid General Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Intrepid General Limited in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit) *(Clarity Note)*

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	7

0474-08-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Boehmer Box LP (Respondent)

Unit: "all employees of Boehmer Box LP in the City of Kitchener, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (173 employees in unit)

Number of names of persons on revised voters' list	179
Number of persons who cast ballots	171
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	166
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	54
Number of ballots marked against applicant	110
Number of ballots segregated and not counted	5

2750-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. United Way of Ajax-Pickering-Uxbridge (Respondent)

Unit: "all employees of United Way of Ajax-Pickering-Uxbridge working in the Region of Durham save and except supervisors, and persons above the rank of supervisor" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2833-09-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Temiskaming Shores (Respondent)

Unit: "all employees of the Corporation of the City of Temiskaming Shores in the District of Temiskaming save and except stude. employees employed in a confidential capacity in matters relating to labour relations, supervisors and persons above the rank of supervisor" (79 employees in unit) *(Having regard to the agreement of the parties.)*

3220-09-R: Grand River Valley Health Care Employees Union Local 305 affiliated with the Christian Labour Association of Canada (Applicant) v. Anne Hathaway Residence o/b 1187654 Ontario Limited (Respondent) v. Ontario Federation of Health Care Workers, LIUNA, Local 1110 (Intervener)

Unit: "all employees employed by Anne Hathaway Residence o/b 1187654 Ontario Limited at 480 Downie Street (Anne Hathaway Residence) in the City of Stratford, save and except supervisors and those above the rank of supervisor" (24 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

3290-09-R: Amalgamated Transit Union Local 1415 (Applicant) v. D.C. Synergy Ltd.(Respondent)

Unit: "all employees of D.C. Synergy Ltd. in the City of Ottawa save and except supervisors and persons above the rank of supervisor" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18

Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

3317-09-R: Ontario Public Service Employees Union (Applicant) v. Kemptville District Hospital (Respondent)

Unit: "all paramedical employees of the Kemptville District Hospital in the Municipality of North Grenville save and except Supervisors and persons above the rank of Supervisor, and persons covered by a subsisting collective agreement" (12 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3338-09-R: Canadian Union of Public Employees (Applicant) v. Cimetiere Notre-Dame Cemetery (Respondent)

Unit: "all goods and services counsellors employed by the Cimetiére Notre-Dame Cemetery in the City of Ottawa, save and except supervisors, and those above the rank of supervisors and those members already represented by a trade union" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3348-09-R: The McMaster University Academic Librarians' Association (Applicant) v. McMaster University (Respondent)

Unit: "all academic librarians employed by McMaster University in the City of Hamilton, save and except students, persons directly employed in support of grant-funded or contract-funded research projects, Associate University Librarians, the University Librarian, the Director of the Health Sciences Library, and persons above the rank of Associate University Librarian, University Librarian and Director" (30 employees in unit) *(Having regard to the agreement of the parties.) (Clarity Note)*

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	1

3358-09-R: The Canadian Union of Public Employees (Applicant) v. Toronto Transit Commission (Respondent)

Unit: "all employees known as Protective Services Officers employed by the Toronto Transit Commission in the City of Toronto, Ontario, save and except sargeants and persons above the rank of sargeants and those persons already represented by a trade union" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

3416-09-R: Ontario Secondary School Teachers' Federation (Applicant) v. Lakehead District School Board (Respondent)

Unit: "all Early Childhood Educators employed by the Lakehead District School Board in the Province of Ontario, save and except supervisors and those above the rank of supervisor and any employees in bargaining units for which a trade union held bargaining rights as at this 16th day of February, 2010" (29 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3443-09-R: Canadian Union of Public Employees (Applicant) v. Laurentian University (Respondent)

Unit: "all graduate teaching assistants employed by Laurentian University of Sudbury, Ontario, save and except supervisors and persons above the rank of supervisor" (235 employees in unit) *(Having regard to the agreement of the parties.) (Clarity Note)*

Number of names of persons on revised voters' list	233
Number of persons who cast ballots	80
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	79
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	66
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	1

3444-09-R: Canadian Union of Public Employees (Applicant) v. Sault Area Hospital (Respondent)

Unit: "all child and youth workers employed by Sault Area Hospital in Sault Ste. Marie, Ontario at the General Site, save and except supervisors and persons above the rank of supervisor, and employees for whom another trade union holds bargaining rights" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3471-09-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. PLI - Pacific Language Institute, Inc.(Respondent)

Unit: "all employees of PLI - Pacific Language Institute, Inc., working in the City of Toronto, save and except managers, those above the rank of manager, and office staff" (33 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

3480-09-R: Canadian Union of Public Employees (Applicant) v. Canadian Red Cross Society (Respondent)

Unit: "all Canadian Red Cross employees employed as Passenger Assistants in the Mississauga/Halton Integrated Branch save and except supervisors and persons above the rank of supervisor, and those already represented by a trade union" (17 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

3512-09-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Dana Hospitality Inc.(Respondent)

Unit: "all employees of Dana Hospitality Inc. at the University of Ottawa Heart Institute Hospital, 40 Ruskin Street in the City of Ottawa, save and except manager and persons above the rank of manager" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	5

3540-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Ka-Na-Chi-Hih Specialized Solvent Abuse Treatment Centre (Respondent)

Unit: "all employees of Ka-Na-Chi-Hih Specialized Solvent Abuse Treatment Centre in the City of Thunder Bay, save and except supervisors, persons above the rank of supervisor and office staff" (26 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	2

3549-09-R: Workers United Ontario Council (Applicant) v. Sodexo Canada Ltd.(Respondent) v. UNITE HERE, Health Care and Service Workers Union, Local 304 Affiliated with the Christian Labour Association of Canada (Interveners)

Unit: "all employees of Sodexo Canada Ltd. at York Central hospital located at 10 Trench Street in Richmond Hill, Ontario save and except supervisors, those above the rank of supervisor, chefs, office and clerical staff" (39 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	0

3552-09-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. PRP Senior Living Operating, Inc., o/a Sunrise of Windsor (Respondent)

Unit: "all employees of PRP Senior Living Operating, Inc., o/a Sunrise of Windsor in the City of Windsor, save and except supervisors, persons above the rank of supervisor and office and sales staff" (90 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	91
Number of persons who cast ballots	87
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	82
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	45
Number of ballots marked against applicant	37
Number of ballots segregated and not counted	4

3595-09-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Watson Building Supplies Inc.(Respondent)

Unit: "all employees of Watson Building Supplies Inc. working in the City of London, save and except supervisors, persons above the rank of supervisor, office and clerical staff, sales staff, dispatchers, and students employed during the school vacation period" (5 employees in unit)

Applications for Certification Dismissed Subsequent to Vote

0875-09-R: Service Employees International Union Local 1 Canada (Applicant) v. Amica at City Centre (Respondent)

Unit: "all employees of Amica at City Centre in the city of Mississauga, save and except Registered Nurses, supervisors, persons above the rank of supervisor and office and clerical staff" (62 employees in unit)

Number of names of persons on revised voters' list	54
Number of persons who cast ballots	56
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	30
Number of ballots segregated and not counted	0

2635-09-R: Canadian Union of Public Employees (Applicant) v. YMCA of Peterborough (Respondent)

Unit: "all Employees employed by the YMCA of Peterborough, in the County of Peterborough, save and except supervisors and persons above the rank of supervisor." (145 employees in unit)

Number of names of persons on revised voters' list	144
Number of persons who cast ballots	122
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	119
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	48
Number of ballots marked against applicant	74
Number of ballots segregated and not counted	0

3340-09-R: Teamsters Local Union No.419 (Applicant) v. Waste Services (CA) Inc.(Respondent)

Unit: "all employees of Waste Services (CA) Inc. working at or out of the City of Kawartha Lakes, Ontario and the City of Peterborough, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (41 employees in unit)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	39
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	28
Number of ballots segregated and not counted	0

3387-09-R: CWA/SCA Canada, Local 30241 AKA - The North Bay Newspaper Guild (Applicant) v. 1802500 Ontario Limited dba - The Inn on the Bay (Respondent)

Unit: "all employees of the Inn on the Bay save and except the owner, General Manager, Restaurant Manager and Executive Chef." (19 employees in unit)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	3

3511-09-R: Ontario Public Service Employees Union (Applicant) v. Aldaview Services, a division of Tri-County Mennonite Homes (Respondent)

Unit: "all employees of Tri-County Mennonite Homes, c.o.b. as Aldaview Services (a division of Tri-County Mennonite Homes) in the Regional Municipality of Waterloo, save and except supervisors, persons above the rank of supervisor and office and clerical employees." (66 employees in unit)

Number of names of persons on revised voters' list	66
Number of persons who cast ballots	62
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	61
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	33
Number of ballots segregated and not counted	1

3585-09-R: Health Care and Service Workers Union, Local 304 Affiliated with the Christian Labour Association of Canada (Applicant) v. Sodexo Canada Ltd.(Respondent) v. Workers United Ontario Council, UNITE HERE (Interveners)

Unit: "all retail employees of Sodexo Canada Ltd. and/or Sodexo Canada Inc. and/or Sodexho MS Canada at York Central Hospital located at 10 Trench Street in Richmond Hill, Ontario save and except supervisors, those above the rank of supervisor, chefs, office and clerical staff." (40 employees in unit)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	0

Applications for Certification Withdrawn

0766-08-R; 0774-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Roman Building Materials Ltd. (Respondent)

2796-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Cook Homes Limited (Respondent)

2940-09-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Wal-Mart Canada Corp.(Respondent)

3650-09-R: Teamsters Local Union 938 (Applicant) v. Canada Lands Company CLC Limited C.N. Tower (Respondent)

3708-09-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Perfect Image Painting & Contracting Inc.(Respondent)

3781-09-R: Canadian Union of Public Employees (Applicant) v. Canadian Red Cross Society (Respondent)

3791-09-R: Workers United Ontario Council (Applicant) v. Compass Group Canada Ltd. (Respondent) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Intervener)

3797-09-R: International Union of Operating Engineers, Local 793 (Applicant) v. Baiocco Construction Corp., Baiocco Development Corp.(Respondents)

3837-09-R: International Union, United Automobile, Aerospace, and Agriculture Implement Workers of America (UAW) (Applicant) v. Compass Group Canada Ltd.(Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

0704-04-R: United Food and Commercial Workers International Union, Locals 175 & 633 (Applicant) v. Loblaw Companies Limited c.o.b. Valumart, Loblaw Companies Limited c.o.b. Real Canadian Wholesale Club (Respondents) *(Withdrawn)*

1073-04-R: Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. and, Crossby-Dewar Projects Inc.(Respondents) v. I.B.E.W. Construction Council of Ontario (Intervener) *(Terminated)*

1075-04-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Provigo Distribution Inc. c.o.b. as Maxi & Co. Waterloo, Loblaw Companies Limited c.o.b. as Real Canadian Wholesale Club (Respondents) *(Granted)*

3411-05-R: United Food and Commercial Workers International Union, Locals 175 & 633 (Applicant) v. Loblaw Companies Ltd. c.o.b. as Zehrs Markets Inc.(West Grand Location) and, Loblaw Companies Ltd. c.o.b. as Real Canadian Wholesale Club (Respondents) *(Granted)*

0923-08-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Derbtile Construction Inc. and, Spectre Group Inc.(Respondents) *(Withdrawn)*

2685-08-R: Construction and Allied Workers Local 607 and, Labourers' International Union of North America, Local 1036 (Applicants) v. Lebrun Northern Contracting Ltd., Bruno's Contracting (Thunder Bay) Limited, Sparcon Construction Inc.(Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) *(Dismissed)*

2946-08-R: Ontario Sheet Metal Workers' & Roofers' Conference on its own behalf and on behalf of its Affiliated Bargaining Agents Sheet Metal Workers' International Association, Locals 30, 47, 235, 269, 397, 473, 504, 537, 539 and 562 (Applicant) v. Capital Air Conditioning Ltd., Johnson Controls, Inc., Johnson Controls Ltd., Johnson Controls L.P., Johnson Controls Nova Scotia U.L.C., Johnson Controls World Services Ltd., Brookfield LePage Johnson Controls Facility Management Services Ltd.(Respondents) *(Endorsed Settlement)*

3768-08-R; 2932-09-R: Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. Reidco North Ltd. c.o.b. Reid's Uptown Homes, S.R. Properties Inc., Reidco (86) Ltd., Paul Mountain Homes (Respondents); Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. Reidco North Ltd. c.o.b. Reid's Uptown Homes, S.R. Properties Inc., Reidco (86) Ltd., Paul Mountain c.o.b. Paul Mountain Homes, Reid's Legacy Homes Inc., 1711003 Ontario Ltd., Nathan Reid Homes Ltd.(Respondents) *(Withdrawn)*

0257-09-R: The United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Pace Enterprises (1998) Inc., 2196640 Ontario Inc. and, EMNM Concrete Contracting (a Division of 2196640 Ontario Inc.) (Respondents) *(Endorsed Settlement)*

1031-09-R: International Union of Painters and Allied Trades, Local 1795 (Applicant) v. Rainbow Glass (Niagara) Inc. and, 1473941 Ontario Limited c.o.b. as Premium Building Group (Respondents) *(Withdrawn)*

1549-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Gervais Landscaping & Excavation Limited, and, 1105740 Ontario Inc. (Respondents) *(Withdrawn)*

2744-09-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. MacNeill & Roberts Ltd. and, Portfire Ltd.(Respondents) *(Granted)*

3077-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. The Worx Group of Companies Ontario Ltd. and, Construction Worx Ontario Ltd. and, Concrete Worx Ltd. and, Earth Worx Ontario Ltd.(Respondents) *(Granted)*

3224-09-R: International Union of Painters and Allied Trades, Local 1795 (Applicant) v. Rainbow Glass (Niagara) Inc. and, Rainbow Glass Fab Inc. and, 570 South Service Road Inc. (Respondents) *(Withdrawn)*

3346-09-R: The Quality Control Council of Canada (Applicant) v. Rad-Con Testing Inc., United Cutting and Coring Inc., Rad Con (Respondents) *(Granted)*

SALE OF A BUSINESS

0704-04-R: United Food and Commercial Workers International Union, Locals 175 & 633 (Applicant) v. Loblaw Companies Limited c.o.b. Valumart, Loblaw Companies Limited c.o.b. Real Canadian Wholesale Club (Respondents) *(Withdrawn)*

1073-04-R: Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. and, Crossby-Dewar Projects Inc.(Respondents) v. I.B.E.W. Construction Council of Ontario (Intervener) *(Terminated)*

1075-04-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Provigo Distribution Inc. c.o.b. as Maxi & Co. Waterloo, Loblaw Companies Limited c.o.b. as Real Canadian Wholesale Club (Respondents) *(Granted)*

2444-04-R: United Food and Commercial Workers Union, Local 1977 (Applicant) v. Real Canadian Wholesale Club, Zehrs Markets, A Division of Zehrmart Limited and, Loblaw Companies Limited (Respondents) *(Granted)*

3411-05-R: United Food and Commercial Workers International Union, Locals 175 & 633 (Applicant) v. Loblaw Companies Ltd. c.o.b. as Zehrs Markets Inc.(West Grand Location) and, Loblaw Companies Ltd. c.o.b. as Real Canadian Wholesale Club (Respondents) *(Granted)*

0923-08-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Derbtile Construction Inc. and, Spectre Group Inc.(Respondents) *(Withdrawn)*

2685-08-R: Construction and Allied Workers Local 607 and, Labourers' International Union of North America, Local 1036 (Applicants) v. Lebrun Northern Contracting Ltd., Bruno's Contracting (Thunder Bay) Limited, Sparcon Construction Inc.(Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) *(Dismissed)*

2946-08-R: Ontario Sheet Metal Workers' & Roofers' Conference on its own behalf and on behalf of its Affiliated Bargaining Agents Sheet Metal Workers' International Association, Locals 30, 47, 235, 269, 397, 473, 504, 537, 539 and 562 (Applicant) v. Capital Air Conditioning Ltd., Johnson Controls, Inc., Johnson Controls Ltd., Johnson Controls L.P., Johnson Controls Nova Scotia U.L.C., Johnson Controls World Services Ltd., Brookfield LePage Johnson Controls Facility Management Services Ltd.(Respondents) *(Endorsed Settlement)*

3768-08-R; 2932-09-R: Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. Reidco North Ltd. c.o.b. Reid's Uptown Homes, S.R. Properties Inc., Reidco (86) Ltd., Paul Mountain Homes (Respondents); Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. Reidco North Ltd. c.o.b. Reid's Uptown Homes, S.R. Properties Inc., Reidco (86) Ltd., Paul Mountain c.o.b. Paul Mountain Homes, Reid's Legacy Homes Inc., 1711003 Ontario Ltd., Nathan Reid Homes Ltd.(Respondents) *(Withdrawn)*

0257-09-R: The United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Pace Enterprises (1998) Inc., 2196640 Ontario Inc. and, EMNM Concrete Contracting (a Division of 2196640 Ontario Inc.) (Respondents) *(Endorsed Settlement)*

1031-09-R: International Union of Painters and Allied Trades, Local 1795 (Applicant) v. Rainbow Glass (Niagara) Inc. and, 1473941 Ontario Limited c.o.b. as Premium Building Group (Respondents) *(Withdrawn)*

1549-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Gervais Landscaping & Excavation Limited, and, 1105740 Ontario Inc. (Respondents) *(Withdrawn)*

1560-09-R: The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Superior-Greenstone District School Board and, The Caramat District School Area Board (Respondents) *(Withdrawn)*

1565-09-R: The Ontario Secondary School Teachers' Federation (OSSTF) (Applicant) v. The Rainbow District School Board and, The Asquith Garvey District School Area Board (Respondents) *(Withdrawn)*

2198-09-R: Le Conseil scolaire de district catholique des Aurores boréales (Applicant) v. L'Association des enseignantes et des enseignants franco-ontariens, unité Grand Nord-Ouest catholique, L'Association des enseignantes et des enseignants franco-ontarien, unité Red Lake (Respondents) *(Endorsed Settlement)*

2744-09-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. MacNeill & Roberts Ltd. and, Portfire Ltd.(Respondents) *(Granted)*

3077-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. The Worx Group of Companies Ontario Ltd. and, Construction Worx Ontario Ltd. and, Concrete Worx Ltd. and, Earth Worx Ontario Ltd.(Respondents) *(Granted)*

3224-09-R: International Union of Painters and Allied Trades, Local 1795 (Applicant) v. Rainbow Glass (Niagara) Inc. and, Rainbow Glass Fab Inc. and, 570 South Service Road Inc. (Respondents) *(Withdrawn)*

3346-09-R: The Quality Control Council of Canada (Applicant) v. Rad-Con Testing Inc., United Cutting and Coring Inc., Rad Con (Respondents) *(Granted)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0468-09-R: Glynn Sayeau (Applicant) v. The International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario Quinte & St. Lawrence Electrical Workers Local Union 115 (Respondent) v. Terry Shortt Electrical Services Ltd.(Intervener)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of the responding party in all other sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman." (1 employee in unit) *(Granted)*

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	1
Number of ballots segregated and not counted	0

2973-09-R: Stephen Anger (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent) v. Beneff Concrete Ltd.(Intervener)

Unit: "all construction employees engaged in concrete forming and finishing construction on all construction projects within the counties of Middlesex, Bruce, Elgin, Oxford, Perth and Huron, save and except non-working foremen and persons above the rank of non-working foreman, office, clerical and engineering staff." (5 employees in unit) *(Withdrawn)*

3277-09-R: Jason Bonney (Applicant) v. Service Employees International Union Local 2 (Respondent) v. Ontario Lottery and Gaming Corporation c.o.b. as OLG Brantford Casino (Intervener)

Unit: "all Table Games Inspectors (formerly Floor Supervisors) and Dual Rate Pit Managers, when performing the duties of Table Games Inspectors, of OLG Casino Brantford, in the City of Brantford." (63 employees in unit) *(Terminated)*

3446-09-R: The Westin Bristol Place Hotel Employees (Judith Austin) (Applicant) v. CAW – Canada Local 252 (Respondent) v. The Westin Bristol Place Toronto Airport Hotel (Intervener)

Unit: "all employees of The Westin Bristol Place Toronto Airport, in the City of Toronto, save and except supervisors, persons above the rank of supervisor, front desk staff, executive chef, sales staff and office and clerical staff." (105 employees in unit) *(Granted)*

3527-09-R: Kerry Martineau (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) *(Dismissed)*

3528-09-R: The Staff of the Trent Central Student Association (Applicant) v. The Canadian Union of Public Employees Local 1281 (Respondent) *(Granted)*

3538-09-R: Patricia Yule (Applicant) v. UNITE HERE and its Local 2347 (Respondent) v. Niagara 21st Group Inc. c.o.b. Courtyard by Marriott (Intervener) *(Dismissed)*

3544-09-R: Aaron Boisvert (Applicant) v. Carpenters District Council of Ontario United Brotherhood of Carpenters & Joiners of America & Local 249 (Respondent) *(Dismissed)*

3550-09-R: Certainteed Gypsum Canada, Inc. Mississauga Plant Employees (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada C.A.W. Canadian Auto Workers Local 1256 (Respondent) v. Certainteed Gypsum Canada, Inc.(Intervener) *(Dismissed)*

Unit: "all employees at its Gypsum Plant and Warehouse in Mississauga, save and except Supervisors, persons above the rank of foremen and office staff." (53 employees in unit)

3551-09-R: Troy Grenier (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 414 (Respondent) v. Vanfax a Division of Belron Canada Inc.(Intervener) *(Granted)*

3553-09-R: Employees of La Garderie Les Petites Mains (Windsor) Inc.(Applicant) v. Canadian Union of Public Employees (Respondent) v. La Garderie Les Petites Mains (Windsor) Inc. (Intervener) *(Granted)*

Unit: "all employees of La Garderie Les Petites Mains (Windsor) Inc. in the City of Windsor save and except Supervisors and persons above the rank of Supervisor." (13 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	13
Number of ballots segregated and not counted	0

3573-09-R: Sandra Balfe (Applicant) v. UNITE HERE Ontario Council/Workers United Ontario Council (Respondents) v. Compass Group Canada LTD dba Chartwells (Intervener) *(Granted)*

Unit: "all COMPASS Group Canada Ltd. employees engaged in the cafeteria food service operations at the following sites of Georgian College, Ontario, save and except supervisors, Chefs, persons above the rank of supervisor, office and sales staff: * BARRIE (1 GEORGIAN DRIVE, BARRIE, ON L4M 3X9) * ORILLIA (825 MEMORIAL AVENUE, BOX 2316, ORILLIA, ON L3V 6S2) * OWEN SOUND (1450 EIGHTH STREET EAST, BOX 700 OWEN SOUND, ON N4K 5R4)" (36 employees in unit)

Number of names of persons on revised voters' list	43
Number of persons who cast ballots	36
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	30
Number of ballots segregated and not counted	0

3575-09-R: Ken Argent, Ivano Dalla Pasqua, Scott Irvin, and Marh Weech (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkered), Local 4153 (Respondent) *(Granted)*

Unit: "all employees of Canon Canada Inc., Business Solutions Division in the City of Burlington, save and except managers and persons above the rank of manager, office, clerical and sales staff." (21 employees in unit)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	18
Number of ballots segregated and not counted	0

3644-09-R: Kerry Martineau (Applicant) v. United Food & Commercial Workers, Local 175 (Respondent) *(Granted)*

Unit: "all employees of Northdale Manor in the Town of New Liskeard, save and except directors, persons of above the rank of director, registered nurses, hair stylists, office and clerical staff." (30 employees in unit)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	16
Number of ballots segregated and not counted	0

3673-09-R: Carlos Correia (Applicant) v. Retail, Wholesale Canada CAW Division Local 462 (Respondent) *(Dismissed)*

3754-09-R: Sandra Balfe (Applicant) v. Workers United Ontario Council (Respondent) *(Dismissed)*

3808-09-R: Gabriel Humelnicu (Applicant) v. Canadian Auto Workers, Local No.27 (Respondent) *(Dismissed)*

3899-09-R: Altin Kape (Applicant) v. Labourers' International Union of North America, Local 625 (Respondent) v. Petro Cement Work (Intervener) *(Dismissed)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2445-04-U: United Food and Commercial Workers Union, Local 1977 Applicant) v. Real Canadian Wholesale Club, Zehrs Markets, A Division of Zehrmart Limited and, Loblaw Companies Limited (Respondents) *(Withdrawn)*

1144-07-U: Canadian Union of Public Employees, Local 4400 (Applicant) v. Toronto District School Board (Respondent) *(Withdrawn)*

3318-07-U: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Southend Drywall & Acoustics Ltd.(Respondent) *(Granted)*

0482-08-U: Canadian Union of Public Employees and Its Local 2424 (Applicant) v. Carleton University (Respondent) *(Terminated)*

0493-08-U; 1866-08-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Boehmer Box LP (Respondent) *(Granted)*; 1866-08-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Boehmer Box LP (Respondent) *(Dismissed)*

0573-08-U: Ian Alcantara (Applicant) v. Service Employees International Union, Local 2 (Respondent) v. Imperial Parking Canada Corporation (Intervener) *(Terminated)*

1056-08-U: Dr.René Gagné (Applicant) v. Algoma University College Faculty Association (Respondent) v. Algoma University College (Intervener) *(Dismissed)*

2493-08-U: Molly Acton Rinaldo and Julie Grimaldi on behalf of AMAPCEO represented OPP employees (Applicant) v. The Association of Management, Administrative and Professional Crown Employees of Ontario (A.M.A.P.C.E.O.) (Respondent) v. The Crown in Right of Ontario (as represented by the Ministry of Government Services) (Intervener) *(Withdrawn)*

3240-08-U: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. R.O.M. Contractors Limited and/or R.O.M. Contractors Inc. and/or Ross Clair Contractors (Respondent)

3471-08-U: Parmanand Kubarie (Applicant) v. Labourers' International Union of North America, Local 506 (Respondent) *(Dismissed)*

0286-09-U: A.C.Concrete Forming Ltd.(Applicant) v. The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity (Respondent) *(Dismissed)*

0302-09-U: Labourers' International Union of North America, Local 625 (Applicant) v. M.R. Dunn Contractors Ltd., M.R. Dunn Holdings Ltd. , and M.R. Dunn Management Co. Ltd. (Respondents) *(Withdrawn)*

0756-09-U: Communications, Energy and Paperworkers Union of Canada and its Local 2003 (Applicant) v. The Cadillac Fairview Corporation (Respondent) *(Withdrawn)*

0947-09-U: Sharon Barber (Applicant) v. Canadian Union of Public Employees and its Local 2512 (Respondent) v. Waterloo Catholic District School Board (Intervener) *(Withdrawn)*

1007-09-U: Tina Lynn Tomecek (Applicant) v. Halton District Educational Assistants' Association (Respondent) *(Withdrawn)*

1011-09-U; 1399-09-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. AllianceOne Ltd. (Respondent) *(Withdrawn)*

1380-09-U: Service Employees International Union Local 1 Canada (Applicant) v. Amica at City Centre (Respondent) *(Withdrawn)*

1442-09-U: Andrew Grabiec (Applicant) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Respondent) *(Dismissed)*

1489-09-U: Jeyasingam Anura (Applicant) v. Teamsters Local Union No.419 (Respondent) *(Dismissed)*

1702-09-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. The Cadillac Fairview Corporation (Respondent) *(Dismissed)*

1769-09-U: Carlton Samuels (Applicant) v. Canadian Union of Public Employees, Local 4400 (Respondent) *(Dismissed)*

1872-09-U: Stephanie Ann Gogo (Applicant) v. Canadian Union of Public Employees - Local 1295 (Respondent) v. Sodexo Canada Ltd.(Intervener) *(Dismissed)*

2077-09-U: Larry Thomas (Applicant) v. United Steelworkers, Local 2894 (Respondent) *(Dismissed)*

2236-09-U: Richard Price (Applicant) v. Canadian Union of Public Employees and its Local 1356 (Respondent) v. York University (Intervener) *(Withdrawn)*

2631-09-U: Superior Dodge Chrysler Ltd., Highland Ford Sales Ltd., Prouse Pontiac Buick GMC Ltd.(Respondents) *(Dismissed)*

2683-09-U: Canadian Union of Public Employees (Applicant) v. YMCA of Peterborough (Respondent) *(Withdrawn)*

2821-09-U: Elias Leobrera (Applicant) v. UNITE HERE Local 75 (Respondent) v. The Grand Restaurant Inc., comprises part of The Grand Hotel (Intervener) *(Withdrawn)*

2837-09-U: Jeffrey Forde (Applicant) v. Elementary Teachers' Federation of Ontario (ETFO) (Respondent) v. Avon Maitland District School Board (Intervener) *(Dismissed)*

2882-09-U; 2883-09-U: Jacqueline Omotayo (Applicant) v. Ecuhome Corporation (Respondent) v. Canadian Union of Public Employees and its Local 3798 (Intervener); Jacqueline Omotayo (Applicant) v. CUPE Local 3798 (Respondent) v. Ecuhome Corporation (Intervener) *(Terminated)*

2953-09-U: Southwestern Ontario Health Care and Service Workers, Local 303, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. L.H. Gray & Son Limited (Respondent) *(Withdrawn)*

2974-09-U: Lise Sawyer (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) v. YWCA Sudbury (Intervener) *(Withdrawn)*

3023-09-U: Kimberly L. Royal (Applicant) v. Echo Association Kathy Currie (President) (Respondent) *(Withdrawn)*

3029-09-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) on behalf of its Local 822 (Applicant) v. Parker Hannifin Canada - O-Ring Division (Respondent) *(Withdrawn)*

3071-09-U: Theresa Nadon (Applicant) v. Echo Association (Respondent) *(Withdrawn)*

3073-09-U: Azaam K. Hakh (Applicant) v. CAW Canada, Local 4268 (Respondent) *(Dismissed)*

3101-09-U: Wendy Ramsumair (Applicant) v. CUPE Local 5001 (Respondent) *(Withdrawn)*

3157-09-U: Mohamed Gutale (Applicant) v. Canadian Union of Public Employees, Local 503 (Respondent) v. City of Ottawa (Intervener) *(Dismissed)*

3181-09-U: Gerry Goodine (Applicant) v. SEIU Local 1 Canada (Respondent) v. Chartwell Seniors Housing REIT (Intervener) *(Withdrawn)*

3253-09-U: Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America Local 1089 (Applicant) v. Veolia ES Canada Industrial Services Inc.(Respondent) *(Withdrawn)*

3362-09-U: International Union of Operating Engineers, Local 793 (Applicant) v. MapleCon Earthworks Limited and, Maple Rock Construction Inc.(Respondents) *(Granted)*

3383-09-U: Amalgamated Transit Union, Local 1415 (Applicant) v. Corporate Customer Service Limited (Respondent) *(Withdrawn)*

3402-09-U: Navaratnam Nagulendran (Applicant) v. Universal Workers Union, L.I.U.N.A Local 183 (Respondent) *(Terminated)*

3473-09-U: Peter Mitchell (Applicant) v. Teamsters Local Union 938 (Respondent) *(Withdrawn)*

3620-09-U: National Organized Workers (Applicant) v. ABC Climate Control Systems Inc. (Respondent) *(Withdrawn)*

3646-09-U: Ontario Nurses' Association (Applicant) v. Sault Area Hospital (Respondent) *(Withdrawn)*

3658-09-U: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Wal-Mart Canada Corp.(Respondent) *(Withdrawn)*

3684-09-U: Labourers' International Union of North America, Local 506 (Applicant) v. Royal Building Supplies Ltd.(Respondent) *(Withdrawn)*

3743-09-U: Lucie Nadon (Applicant) v. CAW, Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

3177-09-M: Service Employees International Union, Local 1 Canada (Applicant) v. Princess Gardens Retirement Residence (Respondent) *(Dismissed)*

3400-09-M: Amalgamated Transit Union, Local 1415 (Applicant) v. Corporate Customer Service Limited (Respondent) *(Withdrawn)*

3681-09-M: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Lomax Management Inc., 829211 Ontario Limited, and, Jeffko Construction Limited (Respondents) *(Granted)*

3724-09-M: Labourers' International Union of North America, Local 506 (Applicant) v. Royal Building Supplies Ltd.(Respondent) *(Withdrawn)*

TRUSTEESHIP

2953-08-T: Canadian Union of Public Employees (Applicant) v. CUPE Local 1880 (Respondent) *(Terminated)*

JURISDICTIONAL DISPUTES

2311-08-JD: International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. E.S. Fox Limited and, Millwrights Local Union 1151 (Respondents) *(Dismissed)*

1603-09-JD: Sheet Metal Workers' International Association, Local 504 and, Sheet Metal Workers' International Association, Local 47 (Applicants) v. The United Brotherhood of Carpenters & Joiners of America, Local 446, Ellis Don Corporation and, Lincora Canada Inc.(Respondents) *(Withdrawn)*

2155-09-JD: Ontario Sheet Metal Workers' and Roofers' Conference and, Sheet Metal Workers International Association, Local 30 (Applicants) v. Bothwell-Accurate Co Ltd., 602592 Ontario Limited, Bothwell-Accurate Co.(2006) Limited and, Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Respondents) *(Terminated)*

3363-09-JD: Millwright Regional Council of Ontario and its Local 1592 (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 527, Aecon Industrial, Garnet Machine (Respondents) *(Withdrawn)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

2231-09-M: Canadian Union of Public Employees and its Local 54 (Applicant) v. The Corporation of the Town of Ajax (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

1960-09-OH: Sarah Roberts (Applicant) v. 1609517 Ontario Incorporated (Respondent) *(Granted)*

2521-09-OH: Heidi Walker (Applicant) v. St. Joseph's Hospital Environmental Services (Respondent) *(Withdrawn)*

3424-09-OH: U.S.W. Local 9165 (Applicant) v. Barrick, Hemlo - David Bell Mine and, Aileen Pajunen (Respondents) *(Withdrawn)*

3625-09-OH: Aaron Norman (Applicant) v. Falcon Fasteners Reg'd.(Respondent) *(Terminated)*

CONSTRUCTION INDUSTRY GRIEVANCES

2822-06-G; 0445-08-G: Canadian Union of Skilled Workers (Applicant) v. Atomic Energy of Canada Limited (Respondent) *(Dismissed)*

0921-08-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Derbtile Construction Inc. and, Spectre Group Inc.(Respondents) *(Withdrawn)*

2586-08-G: The United Brotherhood of Carpenters & Joiners of America, Local 1669 (Applicant) v. Bur-Met Contracting Ltd.(Respondent) *(Withdrawn)*

3769-08-G: Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. Reidco North Ltd c.o.b. Reids Uptown Homes, S.R. Properties Inc., Reidco (86) Ltd., Paul Mountain Homes (Respondents) *(Withdrawn)*

0855-09-G: United Brotherhood of Carpenters and Joiners of America, Local 446 (Applicant) v. Ellis Don Corporation (Respondent) *(Withdrawn)*

1544-09-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Jasper Construction Corp.(Respondent) *(Withdrawn)*

1626-09-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bothwell-Accurate Co. Ltd., 602592 Ontario Limited, Bothwell-Accurate Co.(2006) Limited (Respondents) *(Withdrawn)*

2144-09-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Fernbrook Homes Ltd.(Respondent) *(Withdrawn)*

2245-09-G: Sheet Metal Workers' International Association Local 47 (Applicant) v. Good Mechanical Contractors a division of 524556 Ontario Inc.(Respondent) *(Granted)*

2297-09-G: United Brotherhood of Carpenters and Joiners of America, Local 1256 (Applicant) v. D-Thirteen Corporation (Respondent) *(Withdrawn)*

2368-09-G: Labourers' International Union of North America, Local 1059 (Applicant) v. 1173691 Ontario Inc. c.o.b. Giesbrecht Concrete Floors (Respondent) *(Withdrawn)*

2369-09-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Vanbots Construction Corporation (Respondent) *(Withdrawn)*

2559-09-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. B&B Millwork Inc.(Respondent) *(Endorsed Settlement)*

2607-09-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. B.G. High Voltage Systems Limited (Respondent) *(Withdrawn)*

2693-09-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc.(Respondent) *(Withdrawn)*

2920-09-G: International Union of Painters and Allied Trades, Local 1891 (Applicant) v.1743313 Ontario Ltd. o/a Lopes Drywall (Respondent) *(Withdrawn)*

3130-09-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 2222, Local 2486 hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds" (Applicant) v. Terrastone Construction Inc.(Respondent) *(Endorsed Settlement)*

3151-09-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v.2075064 Ontario Ltd. c.o.b. as PSC Civil Construction, Frank Servello (Respondents) *(Granted)*

3315-09-G: Brick and Allied Craft Union of Canada and Brick and Allied Craft Union of Canada, Local 2 (Applicant) v. Castec Inc.(Respondent) *(Terminated)*

3487-09-G: The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. 1440842 Ontario Inc. o/a KYIV Architectural Metals (Respondent) *(Terminated)*

3488-09-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. Al Gordon Electric Limited (Respondent) *(Dismissed)*

3523-09-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Primo Mechanical Inc. (Respondent) *(Withdrawn)*

3530-09-G: Canadian Union of Skilled Workers (Applicant) v. Bruce Power LP (Jim Witze) (Respondent) *(Withdrawn)*

3539-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. Aberfoyle Crane Rental, a Division of D & F Crane Rental Ltd.(Respondent) *(Granted)*

3543-09-G: Sheet Metal Workers' International Association, Local 537 (Applicant) v. Aggressive Metals Inc.(Respondent) *(Granted)*

3548-09-G: Sheet Metal Workers' International Association, Local 537 (Applicant) v. Aggressive Metals Inc.(Respondent) *(Granted)*

3557-09-G: Operative Plasterers and Cement Masons and Restoration Steeplejacks International Association of the United States and Canada Local 598 (Applicant) v. Paclaw Building Restoration Inc.(Respondent) *(Withdrawn)*

3567-09-G: International Union of Bricklayers and Allied Craft Workers, Local 6 (Applicant) v. Limen Masonry Limited, Limen Group Ltd., Limen Masonry (2003) Inc. , Limen Enterprises (2003) Inc., Jomil Renovations Ltd.(formerly Acmar Masonry Inc.) and, Acmar Group Ltd. (Respondents) *(Terminated)*

3568-09-G: International Union of Bricklayers and Allied Craftworkers, Local 6 (Applicant) v. Limen Masonry Limited, Limen Group Ltd., Limen Masonry (2003) Inc., Limen Enterprises (2003) Inc., Jomil Renovations Ltd.(formerly Acmar Masonry Inc.) and, Acmar Group Ltd. (Respondents) *(Terminated)*

3578-09-G: Operative Plasterers and Cement Masons and Restoration Steeplejacks International Associations of the United States and Canada Union Local 598 (Applicant) v. Clifford Restoration Ltd.(Respondent) *(Withdrawn)*

3603-09-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. PNR Railworks Inc. (Respondent) *(Withdrawn)*

3666-09-G: Bricklayers, Masons Independent Union of Canada Local 1 Universal Workers' Union, Labourers' International Union of North America, Local 183 Masonry Council of Unions Toronto and Vicinity (Applicant) v. Batnor Construction Ltd.(Respondent) *(Granted)*

3686-09-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Ingerwood Construction Ltd.(Respondent) *(Endorsed Settlement)*

3687-09-G: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. N.K.P. Painting Inc.(Respondent) *(Granted)*

3688-09-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Lake Excavating & Contracting Inc.(Respondent) *(Endorsed Settlement)*

3690-09-G: Labourers' International Union of North America, Local 1059 (Applicant) v. CH Excavating London Limited (Respondent) *(Endorsed Settlement)*

3755-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. C.A.P. Concrete Structures Ltd.(Respondent) *(Granted)*

3758-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Triple A. Concrete & Drain (Respondent) *(Granted)*

3759-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. F & L Contracting (Respondent) *(Granted)*

3760-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Prasher Steel Ltd.(Respondent) *(Withdrawn)*

3763-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 700 (Applicant) v. Lambton Metal Service (Respondent) *(Granted)*

3780-09-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Donald Servant Electric Limited (Respondent) *(Withdrawn)*

3789-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. C.F. Concrete & Drain Inc.(Respondent) *(Granted)*

3799-09-G: International Association of Bridge, Structural and Ornamental Iron Workers, Local 700 (Applicant) v. Carlesimo Steel Manufacturing (Respondent) *(Withdrawn)*

3811-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. M.R. Davis Welding Services & Erector (Respondent) *(Withdrawn)*

3813-09-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sport Systems Unlimited Corp.(Respondent) *(Granted)*

3836-09-G: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, on its own behalf and on behalf of its Local 18 (Applicant) v. S.W. Costie Contracting Inc. o/a CC Group (Respondent) *(Withdrawn)*

3854-09-G: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. Metal Sphere Inc.(Respondent) *(Withdrawn)*

APPEALS - EMPLOYMENT STANDARDS ACT

3463-08-ES: Marielle Brunet (Applicant) v. Bel-Air Automobiles Inc. o/a Bel-Air Lexus Toyota and, Director of Employment Standards (Respondents) *(Terminated)*

3595-08-ES: David Simpson (Applicant) v. Bonduelle Canada Inc. o/a Bonduelle North America and, Director of Employment Standards (Respondents) *(Withdrawn)*

3745-08-ES: BSA Diagnostic Imaging Inc.(Applicant) v. Ravi Thakur and, Director of Employment Standards (Respondents) *(Dismissed)*

0042-09-ES: Joel Halbert &, Linda Lundstrom, Directors of 1481673 Ontario Limited (Applicants) v. Paula Garrido, Catherine Loparco, Felicita Schiavone, Kiu Yan Wong, Kam Fai Lee, Stephania Bitti, Wandy Chan, Hamid Ayoubi, Danny Kwong-Wai Li, Elizabeth Lima, Paul Tremayne, Siu Ting Cheng, Karla Fuentes, Shafic Kara, Al Wen Yan, Yueng Hang Lam, Valentina Milovik, Kitty Lam, Yun Ping Wong, B.Campbell, Lee Seam Lau, Nadiya Malyshkevych, Yu Gui Tam, Vienna Chick, Marsha Nicky, Joy Charlton, Edward Sithampari, Nina Seto, Marco Lee, Svitlana Lytvynova, Rosanna Yuen, Mayela Jauregui, Yun He Chou, Tak Man Tsui, Bing Hing Kwan, Wing Hung Wong, Yan Li Huang, Ljupka Marinova, Jin Hua Chen, Namki Choi, Tammy Philip, Melanie Hoadley, Ivanic Ayoub-Miron, Anna Aivalis, Wing-On Chan, Paula Raikovsky, Bette Leestein, Deana Bryant, Maria Stradomoska, Miluska Ivanonic, Katarina Ivanonic, Nadezda Golic, Margit Miller and, Director of Employment Standards, Wai King Ting, Tsui Hsia Kuan, Siu Ling Tse, Kit-Ching Mack (Respondents) *(Endorsed Settlement)*

0378-09-ES: Tom Schnarr, a Director of 6497667 Canada Inc. o/a The Thirsty Toad (Applicant) v. Jill Lewis and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0637-09-ES: Robert Scott Huston (Applicant) v. Cintas Canada Limited and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0914-09-ES; 0915-09-ES: Reinhard Muhs, a Director of Rotoflex International Inc.(Applicant) v. Martis Boyce, Hashem El-Sherbini, Nirpal Gill, Moc Minh Hoang, Alexis Iglesias, Zbigniew Kowalski, Pantelija Krsmanovic, Ajay Kumar, Balgobin Kumar, Rodney Lopez, Alicia D.Lugtu, Sean Malon, Glyn Netto, Brenda Omelas-Lilge, Sarbast Rasheed, Xiaojun Shen, Sladjan Ilic, Jing Song, Yi Sun, Jaipal Thind, Veronica Thomas, Francis Thompson, Edward Urbanavicius, Luis Vargas, Luis Velez, Xiaobin Wang, Steven Warren, Jerome Yee, Slobodan Zamfirovic, Stanley Aaron, Rodney Allen, Thomas Anderson, Ralph Beier, Irena Bosnjak, Janean Bradley, Tim Burgess, Eduardo Cano, Joe Caparello, Margaret Carreiro-Maiato, James Castro, Jose Cerritos , Yunchun Chen, Liselle Crasto, Nimfa Delizo, Pirooz Deravi, Manohar Dhugga, Klaus D. Eigner, Mark Francis, Leo Garcia, Kevin Gourlay, Shane Harris, Buu Hua, Mandeep Joll, Alex Lopez, Miodrag Lukic, Dylan Maroney, Brian Nicoll, Julio Ospina, Zbigniew Owca, Naresh Roy Patel, Siva Pathmanathan, Michael Pelon, Surinder Purba, Tony Rahier, Val Rimas , Nick Romita, Andrzej Rychlik, Mark Eugene Senkiw, Paresh Shah, Osbourne Shaw, Francisco Soto, Ravi Subramaniam, Shelley Tracy, Vitaly Vaysbeyn, Min Wang, Jim Woo, James Wordley, John Wrixon, Xianqun Xu, Qiang Zhou and, Director of Employment Standards (Respondents); Harald Muhs, a Director of Rotoflex International Inc.(Applicant) v. Martis Boyce, Hashem El-Sherbini, Nirpal Gill, Moc Minh Hoang, Alexis Iglesias, Zbigniew Kowalski, Pantelija Krsmanovic, Ajay Kumar, Balgobin Kumar, Rodney Lopez, Alicia D. Lugtu, Sean Malon, Glyn Netto, Brenda Omelas-Lilge, Sarbast Rasheed, Xiaojun Shen, Sladjan Ilic, Jing Song, Yi Sun, Jaipal Thind, Veronica Thomas, Francis Thompson, Edward Urbanavicius, Luis Vargas, Luis Velez, Xiaobin Wang, Steven Warren, Jerome Yee, Slobodan Zamfirovic, Stanley Aaron, Rodney Allen, Thomas Anderson, Ralph Beier, Irena Bosnjak, Janean Bradley, Tim Burgess, Eduardo Cano, Joe Caparello, Margaret Carreiro-Maiato, James Castro, Jose Cerritos , Yunchun Chen, Liselle Crasto, Nimfa Delizo, Pirooz Deravi, Manohar Dhugga, Klaus D. Eigner, Mark Francis, Leo Garcia, Kevin Gourlay, Shane Harris, Buu Hua, Mandeep Joll, Alex Lopez, Miodrag Lukic, Dylan Maroney, Brian Nicoll, Julio Ospina, Zbigniew Owca, Naresh Roy Patel, Siva Pathmanathan, Michael Pelon, Surinder Purba, Tony Rahier, Val Rimas , Nick Romita, Andrzej Rychlik, Mark Eugene Senkiw, Paresh Shah, Osbourne Shaw, Francisco Soto, Ravi Subramaniam, Shelley Tracy, Vitaly Vaysbeyn, Min Wang, Jim Woo, James Wordley, John Wrixon, Xianqun Xu, Qiang Zhou and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0967-09-ES: Vinay Vaya (Applicant) v. Apache Burgers Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

1099-09-ES: RackAir (Kingston) Inc.(Applicant) v.Gianni Vecchio and, Director of Employment Standards (Respondents) *(Withdrawn)*

1395-09-ES: Downtown Auto Collision Centre Inc.(Applicant) v. Nathalie M. Johansson and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1408-09-ES: Grapple Marketing Inc. c.o.b. as Kwik Kopy Design and Print Centre (Applicant) v. Bonnielee Harrison and, Director of Employment Standards (Respondents) *(Dismissed)*

1485-09-ES: LK Protection Inc.(Applicant) v. Romeo Morgan and, Director of Employment Standards (Respondents) *(Dismissed)*

1581-09-ES: Nissan Canada Inc.(Applicant) v. John Forester and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1823-09-ES: Mediclean Incorporated (Applicant) v. Gladys Mendoza and, Director of Employment Standards (Respondents) *(Granted)*

1906-09-ES: Mingming Kou (Applicant) v. National Time Equipment Co. Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1982-09-ES: Reptilia Inc.(Applicant) v. Cameron Jackson and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2189-09-ES: Tamar Harel (Applicant) v. PETM Canada Corporation o/a Pet Smart, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2234-09-ES: C. Paul Loach (Applicant) v.2033664 Ontario Limited o/a Bolton Toyota and, Director of Employment Standards (Respondents) *(Withdrawn)*

2276-09-ES: Mark Roberts (Applicant) v.2180013 Ontario Inc. o/a Global Direct Savings and, Director of Employment Standards (Respondents) *(Dismissed)*

2291-09-ES: Donald Paul Stannard (Applicant) v. Chrysler Canada Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

2310-09-ES: MGH Holdings Ltd. o/a Dollar Thrifty Car Rental London (Applicant) v. Steven Hadskis and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2335-09-ES; 2336-09-ES: Zejnepe Esati (Applicant) v. M.K. Company Limited and, Director of Employment Standards (Respondents); Skender Esati (Applicant) v. M.K. Company Limited and, Director of Employment Standards (Respondents) *(Withdrawn)*

2454-09-ES: Gary Ball, a Director of the Mar-Tex Group Inc.(Applicant) v. Benny Bravo, Raymond Chan, Gwen M. Paris, Patricia M. Selby, Elvira Viola, Vivian L.H. Wong, and, Director of Employment Standards (Respondents) *(Terminated)*

2515-09-ES: 1673853 Ontario Inc.(Applicant) v. George Mandache and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2528-09-ES: Donelda and Jim's Family Restaurant (Applicant) v. Ms. Kathleen Dawes, Director of Employment Standards (Respondents) *(Withdrawn)*

2657-09-ES: Melissa Nash (Applicant) v. Balloon Experts Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2730-09-ES: Deborah J. Beilhartz (Applicant) v. Huckson Limited and, Director of Employment Standards (Respondents) *(Withdrawn)*

2828-09-ES: Finecraft Fine Jewellery (Applicant) v. Josefina Sanchez and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2860-09-ES: 1411219 Ontario Inc. o/a S & V Delta Towing (Applicant) v. Courtney Courtnage and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2865-09-ES: Kannampuzha Holdings Ltd. o/a River Glen Haven Nursing Home (Applicant) v. Wendy M. Boose and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2900-09-ES: Simcoe Block (1979) Ltd. o/a Simcoe Building Center (Applicant) v. Ryan Ritchie and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2917-09-ES: Claudette Fornieri (Applicant) v.1395142 Ontario Inc. o/a Navan Feed Mill Restaurant and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2923-09-ES: Annie's Ltd. o/a Annie's Esso (Applicant) v. Anthony MacLeod and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2930-09-ES: Individuals Hair Salon (Applicant) v. Carleen Wartman and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2978-09-ES: National Battery Lines (Applicant) v. Anthony Flynn and, Director of Employment Standards (Respondents) *(Dismissed)*

2987-09-ES: Cartier Kitchens Inc.(Applicant) v. Michael Plourde, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3006-09-ES: Craig W. Hadenko o/a Bulldog Logistics (Applicant) v. James Lewis, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3014-09-ES: Lindsay Dalton-Pernokes (Applicant) v. Vehcom Manufacturing and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3031-09-ES: James Lewis (Applicant) v. Craig W. Hadenko o/a Bulldog Logistics, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3037-09-ES: Fernando Rodriguez (Applicant) v. Nicanor Sandoval o/a Sanbrother's Finishing Decorators and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3038-09-ES: Vinylbilt Window Systems Inc.(Applicant) v. Khoshaba Odisho and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3064-09-ES: Alana Shields-McGregor (Applicant) v. Aditya Birla Minacs Worldwide Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3090-09-ES: Sol Palmeras Lodging Inn o/a Comfort Inn (Applicant) v. Kimberly Rodriguez Jordan and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3092-09-ES: Eva Lankin and Brian Joyce (Applicant) v. Merlita Tanaoit and, Director of Employment Standards (Respondents) *(Dismissed)*

3096-09-ES: Vitafoam Products Canada Limited (Applicant) v. Balasegar Kandasamy and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3135-09-ES: Orillia Building Supplies (2001) Limited (Applicant) v. Donald Ewles, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3205-09-ES: 1193471 Ontario Inc. operating as Jean Express (Applicant) v. Abigail Mascarenhas and, Director of Employment Standards (Respondents) *(Terminated)*

3325-09-ES: R.L. Components Ltd.(Applicant) v. Li Ma and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3327-09-ES: B & C Plastics Ltd.(Applicant) v. Bonnie Gushue and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3349-09-ES: Lifeline Delivery Service Inc.(Applicant) v. Becky Menard and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3361-09-ES: Dennis Dawson (Applicant) v. John Eek and Son Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3381-09-ES: John St. Lewis (Applicant) v. Rol-Land Farms Limited and, Director of Employment Standards (Respondents) *(Terminated)*

3391-09-ES; 3392-09-ES; 3393-09-ES; 3394-09-ES; 3395-09-ES; 3396-09-ES; 3397-09-ES; 3398-09-ES; 3399-09-ES: Beanbag Studios Canada Inc.(Applicant) v. Erick Desjardins and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Greg Hatchette and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Mary Morris and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Phillip Hoekstra and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Ross Driedger and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Melanie Lagrou and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Marie Matis and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Erick Desjardins and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Jacob Ewing and, Director of Employment Standards (Respondents) *(Dismissed)*

3420-09-ES: Howie Welding and Repairs (Applicant) v. Bridgette M. Lawson and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3421-09-ES: Bernadine Hladysh (Applicant) v. TLC Alert Nursing & Home Care Services, Director of Employment Standards (Respondents) *(Withdrawn)*

3425-09-ES; 3426-09-ES; 3427-09-ES; 3428-09-ES; 3429-09-ES; 3430-09-ES; 3431-09-ES; 3432-09-ES: Beanbag Studios Canada Inc.(Applicant) v. Erick Desjardins and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Greg Hatchette and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Jacob Ewing and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Mary Morris and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Phillip Hoekstra and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Ross Driedger and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Melanie Lagrou and, Director of Employment Standards (Respondents); Beanbag Studios Canada Inc.(Applicant) v. Marie Matis and, Director of Employment Standards (Respondents) *(Terminated)*

3448-09-ES: Mary's Health Spa Inc.(Applicant) v. Maryam (Minoo) Okhowat-Araghi and, Director of Employment Standards (Respondents) *(Terminated)*

3450-09-ES: Lisa Shulga (Applicant) v. Brian Dudley Ltd., Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3451-09-ES: John M. Avila (Applicant) v.2074163 Ontario Inc. operating as Speedy Muffler King and, Director of Employment Standards (Respondents) *(Terminated)*

3476-09-ES: Ray Daniel Salon Inc.(Applicant) v. Tony (Farshid) Noohi and, Director of Employment Standards (Respondents) *(Dismissed)*

3485-09-ES: Harmandeep S. Grewal (Applicant) v. S. Thandi Transport Inc., and, Director of Employment Standards (Respondents) *(Terminated)*

3492-09-ES: Richard Churchill a Director of Clearcourt Realty Partners Inc.(Applicant) v. Randall Shane Price, David Palster, Matthew Bennett, Emily Mousseau-Douglas, Joshua Chitiz, Trevor Jung, Jason Hillier, Greg Morrison, Yaser Aljarrah, Brent Link, Daniel MacLean and, Director of Employment Standards (Respondents) *(Dismissed)*

3498-09-ES: Haydon Youth Services (Applicant) v. Diane Douglas and, Director of Employment Standards (Respondents) *(Dismissed)*

3499-09-ES: Hartzel Automotive Services (Applicant) v. Angelos Kollaras, Director of Employment Standards (Respondents) *(Dismissed)*

3505-09-ES: 2172376 Ontario Inc., o/a Galleria 814 (Applicant) v. Nurielle Stern and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3519-09-ES: Shutters Canada Inc.(Applicant) v. Mario Barahoma and, Director of Employment Standards (Respondents) *(Dismissed)*

3556-09-ES: Vindan Construction Inc.(Applicant) v. Glen Buckland and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3594-09-ES: Harry O'Donnell (Applicant) v. Zuchters Berk Caterers and, Director of Employment Standards (Respondents) *(Terminated)*

3764-09-ES: IBCNU.NET Inc. o/a Taco Time (Applicant) v. Ashley Pettie and, Director of Employment Standards (Respondents) *(Dismissed)*

3852-09-ES: Lina M. Salazar (Applicant) v. DBPC Group of Companies Ltd. and, Director of Employment Standards (Respondents) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1227-06-HS: 1353837 Ontario Inc. Lawrence Ryan (Applicant) v. Peter Martin and John Dennis, Inspectors (Respondent) *(Terminated)*

1725-09-HS: Fahrhall Mechanical Contractors Limited (Applicant) v. David Whitney, Inspector (Respondent) *(Withdrawn)*

3215-09-HS: United Brotherhood of Carpenters & Joiners of America, Local 1946 (Applicant) v. Ellis-Don Corporation and, Dan Dignard, Inspector (Respondents) v. International Brotherhood of Electrical Workers, Local 120 (Intervener) *(Granted)*

3268-09-HS; 3269-09-HS: Costco Wholesale - Nepean (Applicant) v. Sylvie Granger and Kelly Thomas, Laurie Nicholson, Inspector (Respondents) *(Withdrawn)*

3356-09-HS: Johnson Controls Limited Partnership (Applicant) v. Hepburn Electrical and Contracting Ltd. , Richard Hutchinson, Inspector (Respondents) *(Withdrawn)*

3577-09-HS: Blue Mountain Resorts Limited (Applicant) v. Christopher Ahrens, Inspector (Respondent) *(Granted)*

FIRST AGREEMENT - DIRECTION

3350-09-FC: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v.1554264 Ontario Limited (Respondent) *(Granted)*

PAY EQUITY ACT

0719-09-PE: Brant Haldimand Norfolk Catholic District School Board (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) *(Endorsed Settlement)*

2787-09-PE: Community Visions & Networking (Quinte) (Applicant) v. Services Employees International Local 1.on (Respondent) *(Endorsed Settlement)*

REFERRAL FROM MINISTER (SECTION 115)

3648-09-M: Consolidated Fastfrate Inc.(Applicant) v. Teamsters Local Union 938 (Respondent) *(Withdrawn)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1025-07-ES: TRG Customer Solutions Inc.(Applicant) v. Aimerance Kabongo, and, Director of Employment Standards (Respondents) *(Dismissed)*

3172-08-R: Tri-Board Student Transportation Services Inc.(Applicant) v. Algonquin and Lakeshore Catholic District School Board, Hastings and Prince Edward District School Board, The Limestone District School Board, Canadian Union of Public Employees, Canadian Union of Public Employees and its Local 1479, Canadian Union of Public Employees and its Local 1022, and, Canadian Union of Public Employees and its Local 1480 (Respondents) *(Dismissed)*

0923-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America on behalf of itself and its constituent trade unions Local 27 and Local 397 (Applicant) v. Salwood General Contractors Inc., 1660434 Ontario Inc., Domenic Loschiavo o/a Starwood General Contractors Inc.(an unregistered business name) (Respondents) (Disposition not available)

1820-09-ES: Rashmi Arya (Applicant) v. Club Par Excellance Inc., and, Director of Employment Standards (Respondents) *(Dismissed)*

2580-09-ES; 2862-09-ES: Canada Centre Publications Inc.(Applicant) v. Chanpreet Jammu and, Director of Employment Standards (Respondents); Canada Centre Publications Inc.(Applicant) v. Shubpreet Josan and, Director of Employment Standards (Respondents) *(Terminated)*

2891-09-ES: Jackie's Alterations Crafts & More (Applicant) v. Pina Alves and, Director of Employment Standards (Respondents) *(Terminated)*

2905-09-FC: International Union of Operating Engineers, Local 793 (Applicant) v. Rainbow Concrete Industries Ltd.(Respondent) *(Dismissed)*

3285-09-HS; 3286-09-HS: Richard Hall (Applicant) v. Daniel Beauchamp, Daniel Bourgon, Roy Weir, Inspector (Respondents); Richard Hall (Applicant) v. Daniel Beauchamp, Daniel Bourgon, Roy Weir, Inspector (Respondents) *(Dismissed)*

3673-09-R: Carlos Correia (Applicant) v. Retail, Wholesale Canada CAW Division Local 462 (Respondent) *(Dismissed)*

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